Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION [STAMP] NO.1523 OF 2023
IN
CRIMINAL WRIT PETITION NO.300 OF 2023

Ghanshyam Upadhyay] Applicant/Intervener

IN THE MATTER OF:

Venugopal Nandlal Dhoot] Petitioner
Vs.
1. Central Bureau of Investigation]

2. State of Maharashtra] Respondents

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Mr. Subhash B. Jha, for Applicant.

Mr. Sandeep S. Ladda a/w Ishani Khanwilkar, Viral Babar, Adnan A. Ansari, Adesh Jadhav and Sarvesh Dixit, for Petitioner.

Mr. Raja Thakare, Senior Advocate a/w Mr. Kuldeep Patil, Ms. Saili Dhuru, Mr. Akash Kavade and Siddharth Jagushte, for Respondent No.1-C.B.I.

Ms. P.P. Shinde, A.P.P, for Respondent No.2-State.

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CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.

RESERVED ON : 12th January, 2023.

PRONOUNCED ON: 20th January, 2023.

ORDER:[Per Prithviraj K. Chavan, J.]:

1. The applicant is a practicing Advocate who seeks to intervene in Criminal Writ Petition No.300 of 2023 filed by the petitioner challenging the F.I.R, his arrest by respondent No.1 as well as orders authorizing his detention by the Special Court in the custody of the respondent No.1.

2. Mr. Jha, learned Counsel appearing for the applicant-intervener submits that E filing number has been generated on 12th January, 2023 and as such, requested for accepting hard copy of the same for the purpose of hearing. E filing number is EC-HCBM01-00177-2023. We have, therefore, accepted the hard copy of the interim application.

3. At the outset, we heard Mr. Jha, learned Counsel for the applicant on a limited aspect of *locus standi* of the applicant seeking intervention in the writ petition.

4. Mr. Jha contends that the applicant has fairly in-depth knowledge of civil as well as criminal statutes and at the same time, has in-depth knowledge of *vedas*, *shastras* and *puranas* as well. He

further contends that the applicant can recite many verses of Holy *Ramayan* verbatim, without referring to Holy *Ramayan* and speak on the subject for hours together and explain meaning of *vedas, shastras*, *purans, Ramayan, Bhagwat Geeta* etc. In this background, Mr. Jha submits that the applicant being an enlightened member of the legal profession thinks that he is duty bound and rather it is his professional responsibility as well to enlighten this Court on the correct legal position of law and let perception gaining momentum that those who are rich and powerful can get away so lightly by getting an order of bail in exercise of extraordinary jurisdiction of this Court vested under Article 226 of the Constitution of India, that too, when highest Court of the country termed such practice as forum shopping which shall be dealt with in some detail. This is in context with interim bail granted to the petitioners in Criminal Writ Petition [Stamp] No.22494 of 2022 with Interim Application (Stamp) No.54 of 2023 with Criminal Writ Petition (Stamp) No.22495 of 2022 with Interim Application (Stamp) No.57 of 2023 by this Bench.

5. The learned Counsel submits that pending the hearing and final disposal of the present Writ Petition and even before deciding

the issue of grant of bail to the petitioner, the issue of maintainability of the petition under Article 226 of the Constitution of India needs to be decided first.

6. As stated hereinabove, we are restricting our focus as to whether the applicant has any *locus standi* to intervene in the writ petition filed by the petitioner.

7. Mr. Jha has invited our attention to the judgment of the Hon'ble Supreme Court in the case of **R. Rathinam Vs. State of Tamil Nadu**[1] by submitting that seventy five Advocates practicing in various Courts in Tamil Nadu were aggrieved by grant of bail in a case in which six persons belonging to the scheduled caste community were done to death, it was observed that the powers so vested with the High Court can be invoked even by the State or by an aggrieved party and that the said power can be exercised by the High Court *suo motu.* He submits that the Supreme Court further proceeded to observe that any member of the public, whether he belongs to any particular profession or otherwise, who has a concern in the matter can move the High Court to remind it of the need to invoke the said power *suo motu.* Learned Counsel would

1 (2000) 2 SCC 391

further submits that the issue of *locus standi* had also been raised in case of **A.R. Antulay Vs. Ramdas Srinivas Nayak**,[2] wherein the Hon'ble Supreme Court held that the doctrine of *locus standi* is totally foreign to criminal jurisprudence.

8. It appears that the learned Counsel has deliberately turned Nelson's eye to the specific observations in paragraph 5 of the judgment in case of **R. Rathinam** (supra), which reads thus;

> *"We agree with the learned Judges that neither those 75 Advocates nor any other person can challenge the correctness of the order passed by the Single Judge of the Madras High Court by moving the same High Court subsequently. If they had any grievance against the orders passed by the Single Judge, the only remedy open was to move this Court seeking special leave under Article 136 of the Constitution of. They have not done so".*

By merely calling oneself as an enlightened member of the legal profession does not *ipso facto* mean that the applicant has **concern** in the matter in hand. It is the respondent No.1 who can be said to have a **concern** in the matter and not the applicant, who is a stranger - neither a victim nor an accused in the case. It has been

2 (1984) 2 SCC 500

specifically observed by the Hon'ble Supreme Court in paragraph 8, which reads thus;

> *"8. It is not disputed before us that the power so vested in the High Court can be invoked either by the State or by any aggrieved party. Nor is it disputed that the said power can be exercised suo motu by the High Court. If so, any member of the public, whether he belongs to any particular profession or otherwise, who has a* ***concern*** *in the matter can move the High Court to remind it of the need to invoke the said power suo motu. There is no barrier either in Section 439 of the Code of in any other law which inhibits a person from moving the High Court to have such powers excised suo motu. If the High Court considers that there is no need to cancel the bail for the reasons stated in such petition, after making such considerations it is open to the High Court to dismiss the petition. If that is the position, it is also open to the High Court to cancel the bail if the High Court feels that the reasons stated in the petition are sufficient enough for doing so. It is, therefore, improper to refuse to look into the matter on the premise that such a petition is not maintainable in law".*

9. Learned Counsel has also pressed into service a judgment of the Hon'ble Supreme Court in case of **Manohar Lal Vs. Vinesh Anand and others**[3], wherein it has been held that to pursue an

3 (2001) 5 SCC 407

offender in the event of commission of an offence is to sub-serve a social need and that society cannot afford to have a criminal escaped his liability, since that would bring about a state of social pollution which is neither desired, nor warranted and this is irrespective of the concept of locus.

10. We deem it expedient to clarify that the petitioners in Criminal Writ Petition [Stamp] No.22494 of 2022 and Criminal Writ Petition (Stamp) No.22495 of 2022 have been released on interim bail, without touching the merits of the case only on a limited aspect as to whether respondent No.1-C.B.I as well as the Special court have followed the dicta of the Supreme Court in the case of **Arnesh Kumar Vs. State of Bihar**[4] and **Satender Kumar Antil Vs. CBI**[5] while arresting and authorizing detention of the petitioners therein in the custody of the respondent No.1.

11. The law on the aspect of *locus standi* in the criminal proceedings is no more *res integra.* There are catena of judgments to the effect that a stranger cannot be permitted to intervene or interfere with the criminal proceedings which are instituted by the

4 (2014) 9 SCC 273
5 (2022) 10 SCC 51

State against an accused. C.B.I is an independent and statutory Authority investigating the instant crime. We cannot permit a stranger to indirectly became an instrument to attain or obtain any beneficial achievement which one could not get through normal legal process. Once the investigation is complete and the charge-sheet is filed in the competent Court then that Court is expected to apply it's judicial mind and permit the proceedings to progress till it results in finality. Essentially, criminal offences have been treated as offences against the State. It is the State alone who is competent to investigate and prosecute the offender since the crime is committed against the Society at large. The Code of Criminal Procedure has set out a mechanism for investigation of such crimes and for the said purpose, the hierarchy of criminal courts is created which are competent to exercise it's jurisdiction in the manner conferred on it under Chapter II of the Code of Criminal Procedure. The Code also set out the power of these Courts by which the offences are triable. The powers of the investigating machinery, including the power to arrest, compel appearance is also set out in the Code of Criminal Procedure itself. On conclusion of the trial and on pronouncement of the judgment by the Court of competent jurisdiction, there is a provision of appeals and no appeal lie from

any judgment or order of a criminal court except as provided by the Code or by any other law for the time being in force. If at all, it is only a victim who has a right to participate in a proceeding right from the stage of bail till it attains finality. A proviso has also been inserted in section 378, thereby recognizing a right of a victim to prefer an Appeal against any order passed by the Court acquitting the accused or convicting him for a lesser sentence. The said amendment was inserted by Act No. V of 2009 with effect from 31st December, 2009 along with the inclusion of the term 'victim' by virtue of Section 2 (wa). Access to mechanism of justice and redress through prescribed procedure includes Right to Appeal. The Appeal which is a statutory remedy is permitted to be exhausted by the State and in case of an acquittal, the manner in which the Appeal is to be filed is determined by Section 378 of the Code. Apart from this, under section 397 of the Code, the High Court or Sessions Court is competent to exercise its power of revision for the purpose of satisfying as to correctness, legality or propriety of any finding, sentence or an order of an inferior Court.

12. A useful reference can be made to a judgment of the Hon'ble Supreme Court in case of **Simranjit Singh Mann Vs. Union of India**[6]. The petitioner in the said case was a leader of recognized political party and as such, having interest in future of convicts approached the Hon'ble Supreme Court challenging the conviction and sentence imposed on two of the convicts, in case of the murder of General Vaidya. The Hon'ble Supreme Court held that the petition was not maintainable and observed that neither under the provisions of the Code of Criminal Procedure nor under any other Statute, a third party stranger is permitted to question the correctness of the conviction and sentence imposed by the Court after a regular trial. Paragraph 7 of the said judgment is extracted below, which reads thus;

> *"In the present case no fundamental right of the petitioner before us is violated; if at all the case sought to be made out is that the fundamental rights of the two convicts have been violated. The two convicts could, if so minded, have raised the contention in the earlier proceedings but a third party, a total stranger to the trial commenced against the two convicts, cannot be permitted to question the correctness of the conviction recorded against them. If that were permitted any*

6 (1992) 4 SCC653

and every person could challenge convictions recorded day in and day out by courts even if the persons convicted do not desire to do so and are inclined to acquiesce in the decision. If the aggrieved party invokes the jurisdiction of this Court under Article 32 of the Constitution, that may stand on a different footing as in the case of A.R. Antulay Vs. R.S. Nayak and anr. However, we should not be understood to say that in all such cases the aggrieved party has a remedy under Article 32 of the Constitution. Unless an aggrieved party is under some disability recognised by law, it would be unsafe and hazardous to allow any third party to question the decision against him. Take for example a case where a person accused under Section 302, I.P.C is convicted for a lesser offence under Section 324, I.P.C The accused is quite satisfied with the decision but a third party questions it under Article 32 and succeeds. The conviction is set aside and a fresh trial commenced ends up in the conviction of the accused under Section 302, I.P.C. The person to suffer for the unilateral act of the third party would be the accused! Many such situations can be pointed out to emphasise the hazard involved if such third party's unsolicited action is entertained. Cases which have ended in conviction by the apex court after a full gamut of litigation are not comparable with preventive detention cases where a friend or next of kin is permitted to seek a writ of habeas corpus.

> *We are, therefore, satisfied that neither under the provisions of the Code nor under any other statute is a third party stranger permitted to question the correctness of the conviction and sentence imposed by the Court after a regular trial. On first principles we find it difficult to accept Mr. Sodhi's contention that such a public interest litigation commenced by a leader of a recognised political party who has a genuine interest in the future of the convicts should be entertained".*

The Hon'ble Supreme Court in the said case has also considered a well known judgment in the case of **A.R. Antulay** (supra) by contending that it stands on altogether different footing. The observations of the Supreme Court in case of **Simranjit Singh Mann** (supra) that the person to suffer for the unilateral act of the third party would be the accused! Many such situations can be pointed out to emphasize the hazard involved if such third party's unsolicited action is entertained.

13. In a latest judgment of the Hon'ble Supreme Court in the case of **P. Dharamaraj Vs. Shanmugam and others**[7], while dealing with the scope of sections 482, 320 of the I.P.C and Article 226 of the Constitution of India, it has been observed that where offences are

7 AIR 2022 Supreme Court 4195

capable of having an impact not merely on complainant and accused but also on others, Court has to go slow even while exercising jurisdiction under S. 482 Cr. P.C or Article 226 of the Constitution of India. The Hon'ble Supreme Court has also dealt with an aspect of locus of a third party to challenge the criminal proceedings or to seek relief in respect of criminal proceedings by referring to it's judgment in the case of **Janata Dal Vs. H.S. Chowdhary**[8]. It would be advantageous to extract the relevant paragraphs of the judgment, which read thus;

> *"19. The decision in Sanjay Tiwari (supra), relied upon by Shri Mukul Rohtgai, learned senior Counsel for the de facto complainant, is of no application to the case on hand. The appeal in Sanjay Tiwari's case arose out of an application for expediting the trial of a criminal case pending on the file of the Special Judge, Gorakhpur, for alleged offences under Sections 420, 467, 468, 471, 477A, 120B IPC and Section 13 (1) (c) (d) r/w Section 13 (2) of P.C. Act. The said application for expediting the trial was moved by a person who was neither the victim nor the accused. Therefore, this Court found that a person who has nothing to do with the pending trial, cannot seek to expedite the trial, Paragraphs 11 to 15 of the said decision on which heavy reliance is placed read as follows:-*

8 (1991) 3 SCC 756

"11. It is well settled that criminal trial where offences involved are under the Prevention of Corruption Act have to be conducted and concluded at the earliest since the offences under Prevention of Corruption Act are offences which affect not only the accused but the entire society and administration. It is also well settled that the High Court in appropriate cases can very well under Section 482 CR.P.C. or in any other proceeding can always direct trial court to expedite the criminal trial and issue such order as may be necessary. But the present is a case where proceeding initiated by respondent No.2 does not appear to be a bona fide proceeding. Respondent No.2 is in no way connected with initiation of criminal proceeding against the appellant. Respondent No.2 in his application under Section 482 Cr. P.C in paragraph 6 has described him as social activist and an Advocate. An application by a person who is in no way connected with the criminal proceeding or criminal trial under Section 482 Cr. P.C. cannot ordinarily be entertained by the High Court. A criminal trial of an accused is conducted in accordance with procedure as prescribed by the Criminal Procedure Code. It is the obligation of the State and the prosecution to ensure that all criminal trials are conducted expeditiously so that justice can be delivered to the accused if found guilty. The present is not a case where prosecution or even the employer of the

accused have filed an application either before the trial court or in any other court seeking direction as prayed by respondent No.2 in his application under Section 482 Cr. P.C.

12. With regard to locus of a third party to challenge the criminal proceedings or to seek relief in respect of criminal proceedings of accused had been dealt with by this Court Janata Dal V. H.S. Chowdhary, (1991) 3 SCC 756: (AIROnline 1991 SC 58). In the above case the CBI had registered FIR under the IPC as well as under the Prevention of Corruption Act, 1947 against 14 accused. On an application filed by the CBI the learned trial Judge allowing the application to the extent that request to conduct necessary investigation and to collect necessary evidence which can be collected in Switzerland passed order on 05.02.1990 which is to the following effect:

> *'"In the result, the application of the CBI is allowed to the extent that a request to conduct the necessary investigation and to collect necessary evidence which can be collected in Switzerland and to the extent directed in this order shall be made to the Competent Judicial Authorities of the Confederation of Switzerland through filing of the requisite/proper undertaking required by the Swiss Law and assurance for reciprocity.*

13. A criminal miscellaneous application was filed by Shri H.S. Chowdhary seeking various prayers before the Special Judge which petition was dismissed by the Special Judge. A criminal Revision under Sections 397/482 Cr. P.C was filed by H.S. Chowdhary in the High Court to quash the order of the Special Judge, which Revision was also dismissed by the High Court. The appeals were filed in this Court by different parties challenging the said order including H.S. Chowdhary. This court while dismissing the appeals filed by the H.S. Chowdhary and others made the following observations:

"26. Even if there are million question of law to be deeply gone into and examined in the criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigants.

"27. We, in the above background of the case, after bestowing our anxious and painstaking consideration and careful thought to all aspects of the case and deeply examining the rival contentions of the parties both collectively and individually give our conclusions as follows:

1. Mr. H. S. Chowdhary has no locus standi (a) to file the petition under Article 51A as a public interest litigant praying that no letter rogatory/request be issued at the request of the CBI and he be permitted to join the inquiry before the Special Court which on 5.2.90 directed issuance of letter rogatory/request to the Competent Judicial Authorities of the Confederation of Switzerland; (b)to invoke the revisional jurisdiction of the High Court under Sections 397 read with 401 of the CrPC challenging the correctness, legality or propriety of the order dated 18.8.90 of the Special Judge; and (c) to invoke the extraordinary jurisdiction of the High Court under Section 482 of the CrPC for quashing the First Information Report dated 22.1.90 and all other proceedings arising therefrom on the plea of preventing the abuse of the process of the Court.

28. In the result, we agree with the First part of the Order dated 19.12.90 of Mr. Justice M.K. Chawla holding that Mr. H.S. Chowdhary and other intervening parties have no locus standi. We, however, set aside the second part of the impugned order whereby he has taken suo moto cognizance and issued show cause notice to the State and CBI and accordingly the show cause notice issued by him is quashed."

> *14. This Court in the above case laid down that it is for the parties in the criminal case to raise all the questions and challenge the proceedings initiate against them at appropriate time before the proper forum and not for third parties under the garb of Public Interest Litigants".*

14. The principles laid down hereinabove by the Hon'ble Supreme Court clearly apply to the case at hand wherein the applicant, as already stated, unnecessarily sought to intervene in the writ petition, which may cause damage to the prosecution's case and at times, may cause serious prejudice to the petitioner also. It may also deny a fair trial.

15. From the tone and tenor of the language used by the applicant that a perception is gaining momentum that those who are rich and powerful can get away so lightly by getting an order of bail in exercise of extraordinary jurisdiction of the Court, smacks a calculated move and *mala fide* attempt to malign the image of this Court. Audacity and brazenness of the applicant is writ large from his conduct which can be readily discerned even from the argument of the learned Counsel appearing for him when it has been sought to be argued that one of the Advocates in the matter of Deepak

Kochhar, who was granted bail by this Court is the common lawyer in the matter of Pankaj Jagshi Gangar decided by the Hon'ble Supreme Court. The learned Counsel argued that such practice amounts to forum shopping. We strongly deplore such attitude and conduct. The Hon'ble Supreme Court in case of **State of Maharashtra Vs. Pankarj Jagshi Gangar[9],** has observed that the release of the respondent-accused on bail by the High Court, that too, by way of interim relief, without at all considering the seriousness of the offences alleged against the respondent, and other settled parameters for grant of bail is wholly impressible. It would be apposite to extract paragraphs 17 and 18, which read thus;

> *"17. It is required to be noted that while releasing the accused on bail that too by way of interim relief the High Court has not at all considered the seriousness of the offences alleged against the accused. After the investigation it has been found that the respondent-accused is running the matka business; is providing funds to the Chhota Shakil and his gangs; that the accused is arranging funds for the expenses of purchasing weapons, information and he is active member of organised crime syndicate. By the impugned order (Pankaj Jagshi Gangar Vs. State of Maharashtra, 2019 SCC Online Bom 2939) the High Court has observed that the sanction to*

9 (2022) 2 SCC 66

invoke the provisions of MCOCA is bad in law as there is no evidence on record. Therefore, even the High Court has not at all considered the allegations with respect to other offences under IPC. Even such an observation at the interim relief stage on the sanction to prosecute/invoke the provisions of MCOCA was not warranted. Virtually the High Court has acquitted the accused for the offence under the MCOCA at the interim relief stage and has granted the final relief at the interim stage exonerating the respondent from MCOCA, which is wholly impermissible.

18. It is required to be noted that by the detailed judgment and order, the learned Special Judge/MCOCA refused to release the accused on bail. The accused challenged the same before the High Court. The bail application preferred by the accused was heard by the learned Single Judge. The learned Single Judge was not inclined to release the accused on bail and therefore the accused withdrew the same and thereafter preferred the writ petition before the Division Bench of the High Court under the guise of challenging the vires of MCOCA and without noticing the above, the Division Bench of the High Court has released the accused on bail that too by way of interim relief, which otherwise the accused could not get before the learned Single Judge and he withdrew the bail application. The aforesaid can be said to be forum

> *shopping by the accused which is highly deprecated and which cannot be approved. On this ground also, the accused is not entitled to be released on bail and the impugned order passed by the High Court releasing the accused on bail deserves to be quashed and set aside".*

16. We are afraid, this ratio would not be of any avail to the learned Counsel for the reason that it is not on the point of locus standi. Nevertheless, Criminal Appeal before the Supreme Court was on merits and in view of the peculiar facts and circumstances of that case. Here, as already stated, there is absolutely no question of going into the merits of the case.

17. The applicant has not only consumed valuable time of this Court by filing an unmerited application seeking intervention but also attempted to browbeat the Court. The applicant is not a naive person. Looking to the overall conduct of the applicant, while rejecting the application, exemplary costs needs to be imposed upon him.

18. Consequently, the application stands rejected with costs of Rs.25,000/-, which shall be deposited with the Maharashtra State

Legal Services Authority, Mumbai, within three weeks from today.

19. Matter be listed for recording compliance of order of costs on **24th February, 2023.**

20. The application stands disposed of.

21. All the parties to act upon the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.] **[REVATI MOHITE DERE, J.]**