

2023 LiveLaw (SC) 218

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
V. RAMASUBRAMANIAN; J., PANKAJ MITHAL; J.**

March 20, 2023

**CRIMINAL APPEAL NO.....OF 2023 (Arising out of SLP (Crl.) No.376 OF 2023)
MAHDOOM BAVA versus CENTRAL BUREAU OF INVESTIGATION**

Code of Criminal Procedure, 1973 – Remand - There seems to be a practice followed by Courts to remand the accused to custody, the moment they appear in response to the summoning order. The correctness of such a practice has to be tested in an appropriate case. (Para 10)

With CRIMINAL APPEAL NO...OF 2023 (Arising out of SLP (Crl.) No.1534 of 2023) CRIMINAL APPEAL NO..... OF 2023 (Arising out of SLP (Crl.) No.3002 of 2023) CRIMINAL APPEAL NO.....OF 2023 (Arising out of SLP (Crl.) No.3027 of 2023)

(Arising out of impugned final judgment and order dated 14-12-2022 in CRMABA No. 4251/2022 passed by the High Court of Judicature at Allahabad)

For Petitioner(s) Mr. Nagendra Singh, Adv. Mr. Ashish Pandey, Adv. Mr. Akash, Adv. Mr. Naman Raj Singh, Adv. Mr. Akash Chaudhary, Adv. Mr. Ashutosh Bhardwaj, Adv. Mr. Prateek Rai, Adv. Mr. Subham Saxena, Adv. Mr. Vishwa Pal Singh, AOR Mr. Anshuman Sinha, Adv. Mr. Vijay Kumar Pandey, Adv. Mr. Vinay Prakash, Adv. Mr. Niteen Kumar Sinha, AOR Mr. Udayan Sinha, Adv. Mr. Hemant Mour, Adv. Mr. Vivek Sharma, AOR Mr. Sidharth Khattar, Adv. Mr. Viresh B. Saharya, AOR Mr. Akshat Agarwal, Adv. Mr. Akash Jain, Adv.

For Respondent(s) Mr. Arvind Kumar Sharma, AOR

J U D G M E N T

V. RAMASUBRAMANIAN, J.

Leave granted.

2. Accused Nos. 2, 3, 10 and 14 in FIR No. RC 219 2019 E0006, investigated by the Central Bureau of Investigation¹, have come up with the above appeals challenging the orders of the High Court of Judicature at Allahabad rejecting their applications for the grant of anticipatory bail.

3. We have heard learned counsel for the appellants and Shri Vikramjeet Banerjee, learned Additional Solicitor General, appearing for the respondent-CBI.

4. The First Information Report² in this case was registered on 29.06.2019 at the instance of the Corporation Bank, for the alleged offences under Sections 420, 467, 468, 471 read with Section 120B IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The gravamen of the allegations contained in the FIR was, *that* a Company by name M/s NaftoGaz India Pvt. Ltd., secured certain credit facilities from a consortium of banks led by the State Bank of India; *that* the facilities were secured by the creation of a charge on movable properties and a mortgage of certain immovable properties; *that* the account of the said Company was operated properly till 27.07.2012, but started showing signs of sickness thereafter; *that* the account was classified as NPA on 22.11.2012, with an outstanding book-balance of more than Rs.92 crores; *that* the account was classified by the Bank as fraudulent one on 03.02.2015; *that* one of the properties mortgaged to the Bank, by

¹ For short, "CBI"

² For short, "FIR"

third party guarantors was later found to be involved in litigation, on account of the defective title of the guarantors; *that* another property was found to have been grossly over-valued; *that* the Company had connived and conspired with advocates and valuers hired by the consortium of banks; and *that* therefore the promoters/directors of the Company, the guarantors as well as those involved in the sanction of the loan were guilty of the offences complained.

5. Though the FIR was lodged on 29.06.2019, none of the accused was ever taken into custody by the respondent-CBI. It appears that all the accused joined the investigation and cooperated with the respondent. Therefore, after the completion of investigation, CBI filed the final report on 31.12.2021.

6. After the CBI filed the final report on 31.12.2021, the Special Court issued summons for the appearance of the accused on 07.03.2022. Therefore, apprehending arrest, the appellants moved applications for anticipatory bail. The applications were rejected by the Special Court and the rejection order was also confirmed by the High Court. Therefore, the appellants are before this Court.

7. Accused No.2, namely Shri Mahdoom Bava, who is the appellant in one of these appeals is stated to be the promotor/director of the Company and he is alleged to be the kingpin. Accused No.3, namely Shri Deepak Gupta is a third party who has allegedly given his personal guarantee. The immovable property to which Shri Deepak Gupta claimed title had been offered as security. According to the prosecution, Shri Deepak Gupta claimed title to the property on the basis of fictitious documents and that he had also already sold away some portions of the property even before creating a mortgage.

8. Shri Akash Gupta, arrayed as Accused No.10 is alleged to have created bogus bills and fake lorry receipts, in connivance with Accused No.2, to enable the Company to have the bills discounted. Accused No.14, namely Shri Yatish Sharma is alleged to have operated the account of one M/s Shri Radhey Traders, to whom a huge amount had been transferred from the account of another firm by name Aggarwal Traders. It was alleged that the mobile phones whose numbers were mentioned in the invoices of M/s Aggarwal Traders, were being used by Shri Yatish Sharma.

9. On the strength of the aforesaid allegations, which are certainly serious in nature, the prayer of the appellants for anticipatory bail is opposed vehemently by the learned Additional Solicitor General. But in our considered view there are at least three factors which tilt the balance in favour of the appellants herein. They are:-

(i) Admittedly, the CBI did not require the custodial interrogation of the appellants during the period of investigation from 29.06.2019 (date of filing of FIR) till 31.12.2021 (date of filing of the final report). Therefore, it is difficult to accept the contention that at this stage the custody of the appellants may be required;

(ii) In the reply/counter filed before the High Court, the CBI had taken a categorical stand that the Court had merely issued summons and not warrant for the appearance of the accused. In the case of Shri Deepak Gupta, CBI had taken a stand before the Special Court that "*the presence of the accused is not required for the investigation but it is certainly required for trial*" and that therefore he needs to be present. Therefore, all that the CBI wanted was the presence of the accused before the Trial Court to face trial. In such circumstances, to oppose the anticipatory bail request at this stage may not be proper; and

(iii) All transactions out of which the complaint had arisen, seem to have taken place during the period 2009-2010 to 2012-2013 and all are borne out by records. When the primary focus is on documentary evidence, we fail to understand as to why the appellants should now be arrested.

10. More importantly, the appellants apprehend arrest, not at the behest of the CBI but at the behest of the Trial Court. This is for the reason that in some parts of the country, there seems to be a practice followed by Courts to remand the accused to custody, the moment they appear in response to the summoning order. The correctness of such a practice has to be tested in an appropriate case. Suffice for the present to note that it is not the CBI which is seeking their custody, but the appellants apprehend that they may be remanded to custody by the Trial Court and this is why they seek protection. We must keep this in mind while deciding the fate of these appeals.

11. In the case of the prime accused, namely Shri Mahdoo Bava, an additional argument advanced by the learned Additional Solicitor General is that he was involved in eleven other cases. But the tabulation of those eleven cases would show that seven out of those eleven cases are complaints under Section 138 of the Negotiable Instruments Act, 1881 and three out of those seven cases are actually inter-parties and not at the instance of the Bank. The eighth case is a complaint filed by the Income Tax Officer and it relates to the nonpayment of TDS amount. The remaining three cases are the cases filed by CBI, one of which is the subject matter out of which the above appeals arise.

12. In view of the aforesaid, we are of the considered view that the appellants are entitled to be released on bail, in the event of the Court choosing to remand them to custody, when they appear in response to the summoning order. Therefore, the appeals are allowed and the appellants are directed to be released on bail, in the event of their arrest, subject to such terms and conditions as may be imposed by the Special Court, including the condition for the surrender of the passport, if any.

Pending application(s), if any, stands disposed of accordingly.

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