

ITEM NO.3

COURT NO.1

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No.8915/2022

(Arising out of impugned final judgment and order dated 23-08-2022 in CRLA No.638/2022 passed by the High Court of Judicature at Bombay)

CENTRAL BUREAU OF INVESTIGATION

Petitioner(s)

VERSUS

MAIANK MEHTA & ORS.

Respondent(s)

Date : 09-02-2023 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Petitioner(s) Mr. Sanjay Jain, ASG
Mrs. Aakanksha Kaul, Adv.
Mr. Zoheb Hussain, Adv.
Mr. Ashutosh Ghade, Adv.
Mrs. Sairica S Raju, Adv.
Mr. Arvind Kumar Sharma, AOR

For Respondent(s) Mr. Amit Desai, Sr. Adv.
Mr. Rohan Shah, Adv.
Mr. Manvendra Mishra, Adv.
Mrs. Vanita Bhargava, Adv.
Mr. Sankalap Sharma, Adv.
Mr. Palash Bhatkoti, Adv.
Mr. Pranjal Agrawal, Adv.
M/s. Khaitan & Co

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 The Central Bureau of Investigation¹ has impugned an order dated 23 August 2022 of a Single Judge of the High Court of Judicature at Bombay on an application filed under Section 482 of the Code of Criminal Procedure 1973 and Article 227 of the Constitution seeking to challenge an order of the Special Judge (CBI) dated 16 June 2022. By the order of the Special Judge (CBI), the first respondent was permitted to travel to Hong Kong, which is his place of residence, for a period of three months by suspending the look out circular issued against him. The High Court has affirmed the order of the Special Judge (CBI).
- 2 On 22 September 2022, the first respondent appeared before this Court on caveat. In the meantime, a statement was made on behalf of the first respondent that he shall not leave India till the next date on which the petition comes up for hearing.
- 3 On 18 October 2022, this Court noted that on 13 October 2021, a notice was issued under Section 91 CrPC directing the first respondent to appear before the Additional Superintendent of Police, CBI, Mumbai with the following documents:

“(i) Statement of account for A/c No.91417600 maintained with Barclays Bank, Singapore in the name of the Respondent No 1 for the period 01.01.2011 to

1 “CBI”

31.12.2020;

- ii) Statement of account under client No.6775997 and A/c no.6775997.001.800.840 maintained with Julius Baer in the name of Pavilion Point Corporation, a company controlled by the Respondent No. 1 since opening till 31.12.2020;
- (iii) Statement of account for A/c no. 155370 (renumbered as 820173) maintained with UBS Bank, Singapore in the name of Pavilion Point Corporation for the period 01.01.2011 to 31.12.2020.”

4 The grievance of the CBI before this Court was that the first respondent had not provided any details for the first of the above accounts maintained with Barclays Bank, Singapore nor did he provide complete details of Pavilion Point Corporation and the bank account maintained with UBS bank, Singapore. At that stage, in order to allay the apprehensions of the CBI, a statement was made on behalf of the first respondent that he would immediately call on the investigating officer so as to indicate what steps have been taken to provide the information which has been referred to in the notice dated 13 October 2021.

5 This Court noted that the Union of India had no objection if a joint meeting was held between the Investigating Officers of the CBI and the Enforcement Directorate² so that the modalities for providing the information which was sought in the notice dated 13 October 2021 could be chalked out. Subsequently, on 7 November 2022, this Court noted that two letters were addressed on behalf of the first respondent, namely, on 21 and 26 October

2 “ED”

2022 to the Assistant Superintendent of Police, CBI. The Court took note of the fact that the statement which was referred to in item (ii) of paragraph 1 of the previous order had been duly furnished.

- 6 The first respondent stated before the Court that a letter would immediately be addressed to the bank to furnish the statements of account of which details were set out in paragraphs 1 and 2 of the previous order. The CBI in its turn expressed that it has no objection to the first respondent approaching the banks so that the information which was sought by it could be provided.
- 7 Counsel appearing on behalf of the first respondent informed the Court that the first respondent had cooperated with the ED as a result of which he was permitted to be an approver in the case which has been registered by the ED and he was willing to furnish such security as the Court may direct including the title deeds of the immovable properties (belonging to his parents in Mumbai) as well as the passports of his parents to enable him to travel abroad.
- 8 On 2 December 2022, the Court was informed by the CBI that the Union Government had decided to move the competent authority in Singapore under the Mutual Legal Assistant Treaty and that, in addition, approval had been granted by the Ministry of Home Affairs for pursuing Letters Rogatories for which an application would be moved before the trial court within a period of three days.

- 9 The petition rests at that stage before this Court.
- 10 We have heard Mr S V Raju, Additional Solicitor General on the previous occasions and Mr Sanjay Jain, Additional Solicitor General presently for the petitioner. Mr Amit Desai, senior counsel appears on behalf of the first respondent with Mr Rohan Shah, counsel.
- 11 The first respondent has been granted pardon upon his willingness to be an approver in the case which has been instituted by the ED. While on the one hand, the first respondent asserts that the considerations which weighed in the grant of pardon to him in the case instituted by the ED should apply to the case which has been instituted by the CBI, this is seriously in contest on behalf of the CBI.
- 12 The Additional Solicitors General appearing on behalf of the CBI on the other hand submitted that the CBI seeks the disclosure of further information which is within the knowledge of the first respondent which is why details of the bank accounts of which disclosure was sought were placed before this Court in a previous proceeding. CBI submits that the information sought by it is independent of the money trail which forms the subject of the ED case.
- 13 Mr Amit Desai, senior counsel appearing on behalf of the first respondent submits that the first respondent is ready and willing at this stage to furnish a letter of authorization to the CBI so that it may directly approach the banks for the disclosure of the statement of accounts provided that CBI furnishes a

time frame within which the first respondent would be permitted to travel abroad. It has been urged that the first respondent who has cooperated with the ED would be ready and willing to cooperate with the CBI so as to ensure that all the information which they seek is duly made available.

14 As the case has evolved before this Court, it is apparent that the situation as it obtained before the High Court when the impugned order was passed on 23 August 2022, is substantially different at the present point in time, consequent upon the demand of the CBI for certain specific information which, until date, has not emerged on the record. The first respondent, as noted above, has indicated that he would be willing to issue an authorization to the CBI provided, some time frame is set down for the process to be completed. The Special Judge (CBI) while considering the application of the first respondent to travel abroad has not had occasion to deal with the issues which have emerged before this Court during the course of the hearing, as adverted to above. The same would apply to the proceedings before the High Court.

15 Instead of this Court applying its mind afresh for the first time to the issues which are sought to be raised by the CBI, we are of the considered view that it would be appropriate to remand the proceedings back to the High Court. Be that as it may, we would request the High Court to reconsider the matter afresh. The High Court may also form its own view on the offer which was made on behalf of the first respondent during the course of the hearing, as

stated above. To facilitate this process, we permit the CBI to file a further affidavit before the High Court in the proceedings which shall be remanded by this Court, within a period of two weeks from the date of this order. Both the parties would be at liberty to produce relevant material, documents and grounds before the High Court in support of their respective pleas. The High Court shall consider the matter afresh and pass fresh orders preferably within a month from the date of this order.

- 16 To facilitate the above, we set aside the impugned order of the High Court dated 23 August 2022 and restore Criminal Application No 638 of 2022 to the file of the High Court.
- 17 Pending the disposal of the criminal application before the High Court, the statement which was made before this Court to the effect that the first respondent shall not leave India shall continue to operate as an order of this Court without this Court being construed to have expressed any opinion on the merits of the application before the High Court which may be considered after hearing the submissions of the parties.
- 18 The Special Leave Petition is accordingly disposed of in the above terms.
- 19 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. - cum - P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar