

IN THE SPECIAL COURT UNDER P.M.L. ACT, GR. BOMBAY

COMMON ORDER BELOW EXH.221, 222 AND 223

IN

CBI SPL CASE NO.830 OF 2021

1. Mr. Kapil Wadhawan	...	Accused No.2
2. Mr. Dheeraj Wadhawan	...	Accused No.3

Versus

Central Bureau of Investigation	...	Respondent
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Appearance:

Mr. Aabad Ponda, Ld Adv. for applicant.

Mr. Sunil Gonsalves, Ld. Spl. P.P.

CORAM : M. G. DESHPANDE,
SPECIAL JUDGE UNDER PML ACT,
(C.R.No.16)

DATE : JUNE 13, 2023.

ORDER

1. Deputy Superintendent, Central Jail No. 7, Tihar, New Delhi forwarded Kapil S/O Rajesh Wadhawan and Dheeraj Rajesh Wadhawan in connection with CBI Special Case No. 830 of 2021 and PMLA Special Case No. 452 of 2020. contending that both of them have been facing number of trials mentioned in two tables of these applications which are pending at Delhi. It is further contended that till 11.06.2023, even after securing bail in the offences pending in Delhi, both of them could not be produced till 11.06.2023. Therefore both of them are being produced before this Court from Jail.

2. Simultaneously, an application Exh.223 relying on **State of Maharashtra and Others V/s Saeed Sohail Sheikh and Others (2012) 13 SCC 192** , has been preferred on behalf of both accused with

following prayers

a	The Court be pleased to direct the remand of applicants in Aurthur Road Jail upon transfer of Judicial custody to this Court from Delhi
b	Any other order in nature and circumstances of this case which deems fit may be passed.

3. On the basis of these prayers Ld Sr. Counsel Mr. Aabad Ponda strenuously submitted to direct the applicants in Arthur Road Jail. Heard Ld. Sr. Counsel Mr. Aabad Ponda at length.

4. Heard the Police Staff, custodian of both accused who brought the accused from New Delhi. Also heard both accused in person whether they have anything to say regarding any ill-treatment at the hands of Police staff since they were taken in custody and produced before this Court. On this both of them submitted in the negative.

5. First of all, it is necessary to note that when these two accused were in the Judicial Custody in Mumbai for various criminal cases, they were lodged in Taloja Jail right from the beginning. Admittedly, both of them were transferred to Delhi abruptly without informing anything to this Court but making a direct correspondence with Superintendent, Taloja Jail. Due to the said act, huge battle of litigation took place and the same reached to the Hon'ble High Court also. Admittedly, the Court's opinion was not sought while transferring both of them in various offences pending at Delhi. The production warrant under Sec.267 of Cr.P.C was straightway issued to the Jail Superintendent the said warrant was addressed to Jail Superintendent as both the accused were initially in the Judicial custody of various CBI

cases and PMLA case. It is a fact that such transfer of both accused without informing this Court in whose judicial custody both of them were, was sheerly in breach of the guidelines laid down by the Hon'ble Supreme Court in the case cited supra.

6. Apart from this, Jail Authorities at New Delhi on two occasions made correspondence to this Court through E-mail as to where both accused to be produced. Accordingly, it was communicated to them to submit both accused in Taloja Jail, where they were previously lodged. Also, the CBI Special Case No. 830 of 2021 along with 965 of 2021 was pending in CBI Special Court and PMLA Special case arising therefrom was pending in this Designated Special Court. In the meantime, as per the law laid down by the Hon'ble Supreme Court in the case of **Rana Ayub Vs. Directorate of Enforcement [Writ Petition (Criminal) No.12 of 2023, decided on 07.02.2023]** and also the specific direction given by the Hon'ble High Court in **Rana Kapoor along with Kapil Wadhawan and Another V/s Directorate of Enforcement (Cri.A No. 795 and 911 of 2002 decided on February 23, 2023)** the CBI Special Case was committed to this Court as per mandate of Sec.44 (1) (c) of the PML Act. Hence, today both i.e. CBI Special Case relating to scheduled offence and PMLA Special Case are pending in this Court for their simultaneous trials as per section 44 (1) © of the PML Act. Also, recently the Hon'ble Supreme Court has been pleased to grant interim bail to both these accused persons in PMLA Special Case No. 452 of 2020 and the same is continued till date. These are in short the facts till date.

7. It has to be noted that these accused persons are not being produced before this Court for the first remand as per Sec.167 of Cr.P.C

as both i.e. CBI Special Court and this Designated Special Court under the PML Act have already entertained their first remands way back and ever since till their transfer to Delhi, both of them have been lodged in Taloja Jail. Already the Delhi Jail Authorities were communicated to follow the procedure as per Sec.267 Cr.P.C and lodged them from where they were taken in custody by Delhi Police. It is vehement submission of Ld. Sr. Counsel Mr. Aabad Ponda referred Paragraph No.7 of application Exh. 223 and vehemently submitted that due to COVID restrictions at the relevant time, both accused were lodged in Taloja Jail which is 40 kms away from this Court and the said action of Taloja Jail officials have grave and severe prejudice to both accused. I carefully examined this argument. It is not only these both accused persons who have been lodged in Taloja Jail but there are several accused persons who were lodged in Taloja Jail, Arthur Road Jail and various Jails connected to Mumbai. Basically, which Jail the accused under Judicial Custody have to be kept, is a question to be dealt with by Jail Authorities. Already, Jail Superintendent, Arthur Road has been repeatedly communicating this Court how the said Jail is overcrowded by Undertrial prisoners which is triple than the basic prescribed strength. Admittedly, these two accused persons were in Taloja Jail right from the beginning till their transfer to Delhi. I am constraint to note that when they were in Taloja Jail, one of them had consumed maximum period of his Judicial Custody in Kokilaben Hospital. Ultimately, this court was constrained to call all high level Doctors of Kokilaben Hospital and directed them to file an affidavit. Thereafter, he was immediately discharged.

8. Now Ld. Sr. Counsel Mr. Aabad Ponda is pointing out the order of Hon'ble Supreme Court in respect of the prayer made by one of

accused persons for temporary/interim bail on medical ground. That application was preferred even prior to production of these two accused from Delhi contending that how he was under treatment at AIIMS, Delh. Still the fact remains that he was not produced before this Court directly from AIIMS but he was produced through Jail. Therefore, Talaja Jail authority will take utmost care of his health and on this ground itself, such direction cannot be given. If prayer of each and every accused persons like present one that they should be lodged in particular jail, is considered that will unnecessarily cause interference in the Jail Administration. It is a fact that one of these two accused persons had provided best available Medical aid previously when both of them were lodged in Talaja Jail. Therefore, following order is passed :

ORDER

1. Application Exh. 221, Exh.222 are disposed of whereas application Exh. 223 stands rejected.
2. Judicial Custody remand of Both accused Kapil Wadhawan and Dheeraj Wadhawan is extended till 20.06.2023 as per Sec.309 (2) of Cr.P.C.
3. ASI Dattaram 7910, Third Battalion Vikaspuri, New Delhi who brought and produced both accused before this Court shall lodge them in Talaja Jail.

Dt.: 13.06.2023



(M.G. Deshpande)
Spl. Judge under PML Act,
City Sessions Court,
Mumbai.

Signed on : 13.06.2023

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

14.06.2023 at 16.40 hours UPLOAD DATE AND TIME		(Mr. Mohit M. Patange) NAME OF STENOGRAPHER	
Name of the Judge		HHJ M. G. DESHPANDE (COURT ROOM NO.16)	
Date of pronouncement of judgment/order		13.06.2023	
Judgment/order signed by P.O. on		13.06.2023	
Judgment/order uploaded on		14.06.2023	