

case for hearing on 30.08.2018 upon urgent mentioning on the previous day (i.e. on 29.08.2018), the High Court proceeded to issue directions on 29.08.2018 at 5.20 P.M., as a result of which Respondent No.1/Neeraj Singal has already been released and the direction given in the impugned order for his release has been implemented. However, learned Additional Solicitor General appearing for the appellants submitted that they intend to continue with the present appeals as the findings and the observations made in the impugned order will have far reaching effects not only on the case on hand but on other investigations and cases concerning offences punishable under the Companies Act, 2013.

4. We may only observe that urgent mentioning of the case was made before the Bench presided over by the learned Chief Justice of India and hearing thereon continued after court hours on 29.08.2018. The matter was directed to be listed on the next day on 30.08.2018. Propriety demanded that the High Court should have showed deference and awaited orders in the present proceedings. The haste with which the High Court was moved on the evening of 29.08.2018 at around 5:20

P.M. to implement its order, despite this Court being seized of the proceedings would indicate an attempt by Respondent No.1/Neeraj Singal to pre-empt the hearing before this Court by securing release. We express our disapproval.

5. The appellants have assailed the interim order passed by the High Court directing the release of Respondent No.1/Neeraj Singal in connection with Case File No.SFIO/INV/BPS/2016/480-494 in a writ petition seeking inter alia the issuance of a writ of habeas corpus, notwithstanding the order passed by the jurisdictional magistrate to send Respondent No.1/ Neeraj Singal to judicial custody until 01.09.2018. The substantive reliefs claimed by Respondent No.1/Neeraj Singal read thus:-

“A. Issue a writ of Mandamus or any other appropriate writ/direction/order in the nature of a writ directing that the condition imposed under Section 212(6)(ii) and Section 212(7) of the Act for release on bail is ultra vires, violative of Articles 14 and 21 of the Constitution, and thus strike down the same as being unconstitutional.

B. Issue a writ of Mandamus or any other appropriate writ/direction/order in the nature of a writ directing that the condition in Section 212(8) of the Act that a person can be arrested by the SFIO, Respondent No. 2 herein, on the basis of material available in its possession and having reason to believe (the reasons for such belief to be recorded in writing) that any person has been ‘guilty’ of any offence punishable under Section 212(6) i.e. for an offence covered under Section 447 of the Act, is in the nature of a presumptive definitive opinion/conclusion which is arbitrary and violative

of Articles 14, 20 and 21 of the Constitution;

C. Issue a writ of Habeas Corpus directing immediate release of the Petitioner herein Sh. Neeraj Singal from the illegal arrest dated 08.08.2018 and consequent illegal custody from Tihar Jail;

D. Issue a writ of Certiorari for quashing/setting aside of the Orders dated 09.08.2018 and 14.08.2018 passed by the Ld. Duty Magistrate, Patiala House Courts, and Ld. 1st ASJ, Dwarka Courts, remanding the Petitioner to judicial custody till 14.08.2018 and 18.08.2018 respectively, as being illegal, unreasoned and reflecting non-application of judicial mind;

E. Pass any such other writ or order(s) as it may deem fit and proper in the interest of justice.”

6. Although the challenge to the constitutional validity of the provisions of the Companies Act, 2013 was limited to Sections referred to in prayer clauses (A) and (B), for the grant of interim relief, the High Court has considered diverse aspects which would create impediment for the Competent Authority under the Act, if not debar them from investigating into offences punishable under the Companies Act, 2013 (for short ‘the Act’), including to file a complaint and/or police report.

7. Indisputably, Respondent No.1/Neeraj Singal was sent to judicial custody in connection with the alleged offences under Section 447 of the Act in terms of a judicial order passed by the jurisdictional court. That order was in force when the writ petition was filed and the interim order to release Respondent

No.1/Neeraj Singal came to be passed. The High Court issued its interim directions, prima facie, in the teeth of the decisions of this Court in **Saurabh Kumar v. Jailor, Koneila Jail and Another**,¹ and **Manubhai Ratilal Patel v. State of Gujarat and Others**². Further, the reasons assigned by the High Court in the impugned order for grant of interim relief are not confined to the issue of the validity of the stated sections of the Act or concerning grant of bail but prima facie impact upon issues concerning matters of investigation and lodging of the complaint and/or police report in respect of offences under the Act.

8. Learned senior counsel appearing for Respondent No.1/Neeraj Singal were at pains to persuade us that the provisions of the Companies Act, 2013 are materially different from the provisions of the Prevention of Money-Laundering Act, 2002 (for short 'the PMLA'). However, we find that the main consideration for grant of interim relief to Respondent No.1/Neeraj Singal by the High Court was on the basis of an analogy with the principle expounded by this Court in **Nikesh**

¹ (2014) 13 SCC 436

² (2013) 1 SCC 314

Tarachand Shah v. Union of India & Anr.,³ declaring the provisions concerning grant of bail in the PMLA invalid and unconstitutional. Similar questions are likely to arise for consideration in SLP(Crl)... Diary No.9360/2018 and the transferred cases [Writ Petition (Crl) No.363/2018 along with Crl.M.A.2151/2018 pertain to Delhi High Court proceedings] which are pending before this Court. Those proceedings were before a Full Bench of the Delhi High Court and in terms of the judgment in **Rajbhushan Omprakash Dixit v. Union of India**,⁴ have since been transferred to this Court.

9. In the nature of the interim order that we propose to pass, we refrain from elaborating on the contentions and the reasons recorded by the High Court at this stage. However, we may observe that prima facie we find that the reasons being on the constitutional validity of provisions apart from Sections 212(6)(ii) and 212(7) of the Act ought not to have weighed with the High Court for grant of interim relief. Moreover, in any case, the High Court ought to have applied the broad contours required to be kept in mind for grant of bail under Section 439 Cr.P.C., which aspect, we find, has not been adverted to at all

³ (2018) 11 SCC 1

⁴ (2018) SCC OnLine Del 7281

in the impugned order. There is prima facie substance in the grievance of the appellants that the High Court has failed to consider matter such as the nature of gravity of the alleged offence. Moreover, we find that in the course of the impugned order, the High Court even proceeded to recall certain observations made by it in another case (***Poonam Malik v. Union of India*** [W.P.(Crl.) No.2384 of 2018] order dated 10th August 2018).

10. Considering the fact that prima facie we find that the observations made in the impugned order may have far reaching consequences and deprive the Competent Authority or the Statutory Authority to proceed in the matter in accordance with the provisions of the Companies Act, 2013 in respect of investigations and including filing of complaint/police report concerning the offences involving serious financial frauds or economic misdemeanor, the impugned order, therefore, deserves to be stayed. We order accordingly. However, since Respondent No.1/Neeraj Singal has secured his release on 29th August, 2018 on the strength of the order of the High Court, before we could take up the case for hearing on 30th August, 2018, we continue the interim

direction given by the High Court to release Respondent No.1/Neeraj Singal.

11. Accordingly, the operation of the impugned order of the High Court is stayed but the interim relief granted to Respondent No.1/Neeraj Singal limited to his release on personal bond shall remain in force during the pendency of these proceedings, subject to the fulfillment of the conditions imposed by the High Court for his release and additionally to report to the concerned officer of SFIO on every Monday and Thursday between 10:30 A.M. to 12:30 P.M. and on such other day or time as directed by the officer concerned. We make it clear that the directions given in the interim order to the appellants [Union of India and Serious Fraud Investigation Office (SFIO)] shall remain stayed in view of the order of stay of operation of the impugned order, in particular, paragraph 71(iv) of the impugned order, namely, Respondent No.1/Neeraj Singal shall not be compelled by the SFIO to sign his statement under Section 217(4) read with Section 217(7) of the Companies Act.

12. We also grant liberty to the appellants to take out a formal application in these proceedings for recall of interim protection or for modification and/or imposing further conditions for the release of Respondent No.1/Neeraj Singal on personal bond. That application will be considered on its own merits.

13. As mentioned earlier, since the questions involved in the present appeals are linked with the issues to be decided by this Court in transferred cases in terms of the order dated 15.03.2018 in SLP(Crl)..... Diary No.9360/2018, we deem it appropriate to withdraw the writ petition filed by Respondent No.1/Neeraj Singal before the High Court of Delhi at New Delhi, bearing Writ Petition (Crl.) No.2453/2018 and transfer it to this Court, to be heard along with aforementioned transferred cases and the present appeals. Ordered accordingly.

.....J.
(A.M. KHANWILKAR)

.....J.
(Dr. D.Y. CHANDRACHUD)

NEW DELHI;
SEPTEMBER 04, 2018.

ITEM NO.1501

COURT NO.1

SECTION II-C

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 for Special Leave to Appeal (Crl.) No. 7241/2018

(Arising out of impugned final judgment and order dated 29-08-2018 in WPCRL No. 2453/2018 passed by the High Court Of Delhi At New Delhi)

SERIOUS FRAUD INVESTIGATION OFFICE

Petitioner

VERSUS

NEERAJ SINGAL & ANR.

Respondents

WITH

SLP(Crl) No. 7242/2018 (II-C)

Date : 04-09-2018 This matter was called on for pronouncement of order today.

For Petitioner

Mr. Maninder Singh, ASG
Mr. Neeraj Kumar Sharma, AOR
Mr. R. Balasubramanian, Adv.
Mr. Ajeet Kumar Srivastava, Adv.
Mr. Arunendra Kr. Singh, Adv.

Mr. Arvind Kumar Sharma, AOR

For Respondents

Ms. Ranjana Roy, Adv.
Ms. Divya Roy, AOR
Mr. Arshdeep Singh, Adv.
Mr. Amit Bhandari, Adv.
Mr. Hemant Shah, Adv.
Mr. Adit Pujari, Adv.
Mr. Anusha Nagarajan, Adv.
Mr. Sumit Bindal, Adv.
Ms. Shivika, Adv.
Mr. Himanshu Gupta, Adv.
Mr. Akshat Gupta, Adv.
Mr. Pramod Dubey, Adv.
Mr. Avishkar Singhvi, Adv.

Hon'ble Mr. Justice A.M. Khanwilkar pronounced the order of the Bench comprising His Lordship and Hon'ble Dr. Justice D.Y. Chandrachud.

Leave granted.

In terms of the signed non-reportable order, the operation of the impugned order of the High Court is stayed but the interim relief granted to Respondent No. 1/Neeraj Singal limited to his release on personal bond shall remain in force during the pendency of these proceedings, subject to the fulfillment of the conditions imposed by the High Court for his release and additionally to report to the concerned officer of SFIO on every Monday and Thursday between 10.30 A.M. to 12.30 P.M. and on such other day or time as directed by the officer concerned.

Liberty to the appellants is granted to take out a formal application in these proceedings for recall of interim protection or for modification and/or imposing further conditions for the release of Respondent No. 1/Neeraj Singal on personal bond. That application will be considered on its own merits.

Since the questions involved in the present appeals are linked with the issues to be decided by this Court in transferred cases in terms of the order dated 15.3.2018 in SLP(Crl.).....Diary No. 9360/2018, we deem it appropriate to withdraw the writ petition filed by Respondent No. 1/Neeraj Singal before the High Court of Delhi at New Delhi, bearing Writ Petition (Crl.) No. 2453/2018 and transfer it to this Court, to be heard along with aforementioned transferred cases and the present appeals. Ordered accordingly.

(Deepak Guglani)
Court Master

(H.S. Parasher)
Assistant Registrar

(signed non-reportable order is placed on the file)