



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2024
(Arising out of SLP(Criminal) No.14476 of 2023)

SOUVIK BHATTACHARYA

...APPELLANT(S)

VERSUS

ENFORCEMENT DIRECTORATE,
KOLKATA ZONAL OFFICE - II

...RESPONDENT(S)

O R D E R

1. Leave granted.
2. This is one of the cases of non-application of mind by the Court, wherein the Special (CBI) Court no.1 (hereinafter referred to as the Special Court) though had not passed any order summoning the present appellant (accused No.10), on taking the cognizance of the offences under the Prevention of Money Laundering Act, 2002 (for short PMLA) vide order dated 07.12.2022, issued summons to the appellant in the Form prescribed under Section 61 CrPC. The appellant thereafter on his voluntarily surrendering before the said Court, had applied for bail, which came to be rejected by the Special Court vide the order dated 22.02.2023.
3. The said order having been challenged by the appellant before the High Court by filing CRM (SB) 164 of 2023, the same came to be dismissed by the High Court vide the impugned order

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dated 18.10.2023. Being aggrieved by the same, the appellant has approached this Court by way of present appeal.

4. At the outset, the learned senior counsel, Mr. Luthra for the appellant drawing the attention of the Court to the order dated 07.12.2022 passed by the Special Court, submitted that though the said Court while taking cognizance of the offence had observed that the accused Nos. 1, 2 and 9 were in judicial custody of the Court and therefore there was no question of issuing any process, and that in respect of the other 11 accused, necessary order for issuance of summons would be issued at a later stage, the summons came to be issued and served upon the appellant. According to him, respecting the summons of the Court, the appellant had voluntarily surrendered before the Court and since then, he is in judicial custody. He also submitted that in absence of any order summoning the appellant, the appellant could not have been taken into custody, even if the cognizance of the offence was taken against him. He conceded that it was a mistake on the part of the appellant in surrendering on the wrong legal advice given to him.
5. However, the learned A.S.G., Mr. Raju for the respondent - ED submitted that the issue of taking the appellant in custody without any order of summons was not raised by the appellant before the High Court. Of course, he fairly submitted that there was no order passed by the Special Court issuing summons or warrant against the appellant, and that appellant had voluntarily appeared and surrendered before the Special Court.

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Mr. Raju pressing into service the provisions contained in Section 437 of the Cr.P.C. however submitted that the accused, even without issuance of summons or warrant from the Court, can appear and surrender before the Court and seek his release on bail. In the instant case, runs submission of Mr. Raju, even if summons was not issued, because the appellant had surrendered before the Court, his application seeking bail was considered under Section 437 Cr.P.C. and was rejected by the Special Court, which order has been confirmed by the High Court.

6. Having regard to the submissions made by the learned senior counsel for the parties and to the material on record, it appears that the Special Court while taking cognizance of the offences under PMLA qua fourteen accused including the appellant (accused no. 10), and allowing the prayer for further investigation vide the order dated 07.12.2022, had observed as under: -

“Since accused Nos. 1, 2 & 9 are in judicial custody of Court so no question of issue any process arises here. In respect of other Eleven accused who are companies necessary order for issuance of summons will be issued at a later stage. Accordingly, it is directed to supply two sets of copies to accused Nos. 1, 2 & 9 who are now detained in judicial custody at respective Correctional Homes and since accused No. 1 and 2 are produced through virtual mode, so copy of the complaint be supplied to accused Nos.1, through the concerned Superintendent Correctional Homes are accordingly directed to

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cause service of the complaint to accused No.1, Partha Chatterjee, accused No.2, Arpita Mukherjee and copy to accused No.9, Manik Bhattacharya shall be served on the next date of his production before this court.”

7. The learned A.S.G. Mr. Raju has not been able to dispute the position that after the passing of the said order on 07.12.2022, there was no order passed by the Special Court for issuance of the summons or warrant against the present appellant, and still the summons was issued and served upon the appellant, pursuant to which he surrendered himself before the Court. We fail to understand as to how summons came to be issued when the Special Court had specifically mentioned in the above order that in respect of the other eleven accused necessary order for issuance of summons will be issued at a later stage.
8. In our opinion, the Court, while taking cognizance of an offence is of the opinion that there is sufficient ground for proceeding, may issue summons for the attendance of the accused when the case appears to be a summons case, or may issue a warrant for causing the accused to be brought or to appear before the Court, when the case appears to be a warrant case under Section 204 of Cr.P.C. The form of summons has to be as prescribed under Section 61 and the form of warrant of arrest has to be as prescribed under Section 70 of Cr.P.C. Further, when any person accused of or suspected of the commission of any non-bailable offence is arrested or detained

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without warrant by an officer in charge of the police station or appears or is brought before the Court other than the High Court or Court of Session, he could be released by the Court on bail under Section 437 of Cr.P.C.

9. In the instant case though there was no order passed by the Special Court for issuance of summons or warrant against the appellant, a summons under Section 61 came to be issued on 22.12.2022 requiring the appellant to appear before the Special Court on 07.01.2023. The appellant appeared before the Special Court and applied for his release on bail. Since there was no order passed by the Special Court for issuance of the summons or warrant, in our opinion, the application of the appellant seeking bail could not have been entertained. There was a basic flaw in the proceedings conducted before the Special Court. It is not disputed by the learned ASG Mr. Raju that the appellant was not arrested during the course of investigation and also when the prosecution complaint was filed before the Special Court.
10. As such Section 437 would come into play when the accused is arrested or detained or when the summons or warrant is issued against the accused for causing him to be brought or to appear before the Court. In absence of any order for issuance of summons or warrant under Section 204 or under any other provision of Cr.P.C., the summons could not have been issued or served upon the appellant nor he could have been arrested or taken into custody. The appellant-accused also appears to have filed the bail application before the Special Court under

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the misconception of fact and misconception of law, which application came to be dismissed by the Special Court. Though the said issue was not specifically raised by the appellant before the High Court, the said question being the question of law, we have permitted the counsel for the appellant to be raised in the instant appeal.

11. In that view of the matter, without expressing any opinion on the merits of the case, we are inclined to accept the present appeal.
12. The appellant - accused No.10 is directed to be released on bail on the terms and conditions that may be imposed by the Special Court.
13. The appeal stands allowed accordingly.
14. Pending application(s), if any, shall stand disposed of.
15. It is needless to say that it will be open for the Special Court to pass appropriate orders, as also will be open to the respondent - ED to file appropriate proceedings as may be permissible under the law, as the exigency may require.

.....J.
(BELA M. TRIVEDI)

.....J.
(PANKAJ MITHAL)

**NEW DELHI;
16TH FEBRUARY, 2024**

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ITEM NO.2

COURT NO.14

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No(s).14476/2023

(Arising out of impugned final judgment and order dated 18-10-2023 in CRM(SB) No.164/2023 passed by the High Court at Calcutta)

SOUVIK BHATTACHARYA

Petitioner(s)

VERSUS

ENFORCEMENT DIRECTORATE KOLKATA ZONAL OFFICE II

Respondent(s)

WITH

SLP(Cr1) No. 16087/2023 (II-B)

(FOR ADMISSION and I.R. and IA No.257729/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 16-02-2024 This petition was called on for hearing today.

CORAM : HON'BLE MS. JUSTICE BELA M. TRIVEDI
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s) Mr. Sidharth Luthra, Sr. Adv.
Mr. Mukul Rohatgi, Sr. Adv.
Ms. Diksha Rai, AOR
Ms. Sheezen Hashmi, Adv.
Mr. Mihir Joshi, Adv.
Mr. Akash Dubey, Adv.
Mr. Arijit Dey, Adv.
Ms. Atiga Singh, Adv.
Ms. Apurva Sachdev, Adv.

For Respondent(s) Mr. S.V. Raju, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Mr. Zoheb Hussain, Adv.
Mr. Annam Venkatesh, Adv.
Mrs. Sairica Raju, Adv.
Mr. Chandra Prakash, Adv.
Mr. Kanu Agrawal, Adv.
Ms. Rukhmini Bobde, Adv.

UPON hearing the counsel the Court made the following

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O R D E R

SLP (Cr1.) No.14476/2023

1. Leave granted.
2. The appeal stands allowed, in terms of the signed order.
3. Pending application(s), if any, shall stand disposed of.

SLP(Cr1) No. 16087/2023

List after two weeks, as prayed for by the learned counsel for the petitioner.

(RAVI ARORA)
COURT MASTER (SH)

(MAMTA RAWAT)
COURT MASTER (NSH)
(signed order is placed on the file)