



***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO. 571 OF 2024

Central Bureau of Investigation,
Head of Branch, CBI, SC1, 2nd Floor,
B wing, Plot no.5B, CBI HQ,
CGO Complex, Lodhi Road, New Delhi

... Petitioner

Versus

1. Netflix Entertainment Services India LLP,
Unit no.02, 6th Floor, Godrej Plot C-68,
G Block, Bandra Kurla Complex,
Bandra East, Mumbai -
2. Shaana Levy
C/o India Today, FC-8, Filmcity,
Sector 16 A, India Today Media Plex,
Noida, Uttar Pradesh 201301.
3. Uraaz Bahl
C/o India Today, FC-8, Filmcity,
Sector 16 A, India Today Media Plex,
Noida, Uttar Pradesh 201301.
4. Moumita Sen,
Producer, Business Head,
Originals & Special projects, India Today,
FC-8, Filmcity, Sector 16 A,
India Today Media Plex,
Noida, Uttar Pradesh 201301.

5. Chandni Ahlawat Dabas
C/o India Today, FC-8, Filmcity,
Sector 16 A, India Today Media Plex,
Noida, Uttar Pradesh 201301
6. Smt. Indrani Pratim Mukerjea
R/O. 19 Marlow,
62-B, Pochkhanawala Road,
Worli, Mumbai-400030
7. Youtube
C/o Google Mumbai, FIFC,
Level 7, Unit 701,
Plot no C-54/55, G-Block,
Bandra Kurla Complex Rd, Bandra East,
Mumbai, Maharashtra - 400051
8. The State of Maharashtra ... Respondents

Mr. Devang Vyas, ASG a/w Mr. Shreeram Shirsat, Spl. P.P., Ms. Tanvi Mate, Mr. Shekhar Mane and Ms. Karishma Rajesh for the Petitioner-CBI.

Mr. Ravi Kadam, Sr. Advocate a/w Mr. Aabad Ponda, Sr. Advocate, Mr. Thomas George, Ms. Tanvi Sinha, Mr. Navankur Pathak, Mr. Aamir Sopariwala, Mr. Jehan Fulwadiwala, Ms. Neeti Nihar and Mr. Aaditya Talwar i/b Saikrishna & Associates for the Respondent No.1

Dr. Abhinav Chandrachud a/w Mr. Rajeev K. Panday, Mr. Madhur Rai and Mr. Sachin Kanse i/b PRS Legal for the Respondent Nos. 2 to 5

Mr. Ranjeet V. Sangle a/w Mr. Chaitanya R. Kulkarni, Mr. Abhinav Tewari and Ms. Nehal Dhruv, for the Respondent No.6

Ms. A. S. Gotad, A.P.P. for the Respondent No.8-State

***CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.***

DATE : 29th FEBRUARY 2024

ORDER (Per Revati Mohite Dere, J.) :

1. By this petition, preferred by the petitioner-CBI under Article 226 of the Constitution of India and under Section 482 of the Criminal Procedure Code, the petitioner seeks stay to the release of the docuseries titled “*The Indrani Mukerjea Story:Buried Truth*”, teasers/trailers in respect of the said docuseries and any other promotional information in any other form on the Over the Top platform of respondent No.1-Netflix Entertainment Services India LLP or any other media outlet by the respondent No.1, till the conclusion of the ongoing trial in SPL. Case CBI No. 117/2015 & SPL. Case CBI No.9/2016.

2. Mr. Vyas, learned ASG submitted that it is imperative to stay the docuseries, inasmuch as, what would emerge from the said docuseries would build a perception in the minds of the

people and as such the credibility of witnesses would be questioned. He submitted that even the rights of other witnesses as well as other co-accused would be jeopardized, if the docuseries is permitted to be aired. He submitted that the docuseries will result in seriously prejudicing the administration of justice and would tantamount to interference in the administration of justice, as it would impact public perception and would impede the rights of the parties to a fair trial. He submitted that the stay to the said docuseries is necessitated considering that the trial is on-going and some of the witnesses in the said docuseries, are yet to be examined.

3. Learned ASG relied on the judgment of this Court in the case of in the case of *Nilesh Navalakha and Others v/s Union of India and Others*¹ and *Mushtaq Moosa Tarani v/s Government of India and Others*². Reliance was also placed on the judgment of the Apex Court in the case of *Zahira Habibulla H. Sheikh and*

1 PIL(ST) No.92252 of 2020 etc. decided on 18.01.2021

2 WP(L) No.269 of 2005 decided on 31.03.2005

*Another v/s State of Gujarat and Others*³.

4. Learned Senior Counsel Mr. Ravi Kadam as well as learned counsel Dr. Abhinav Chandrachud vehemently opposed the petition. They submitted that there was nothing in the docuseries which would prejudice the rights of any of the parties. They submitted that the docuseries is based on information that is already available in public domain. According to the learned counsel for the respective respondents, with respect to the Sheena Bora case, there are already two movies, which are in public domain, and five books which have been published on the Sheena Bora case. They submitted that there are several interviews and podcasts, which are in public domain with respect to the said case. They submitted that the docuseries is based on the available information and records and the contents of the docuseries is based on all which is already in public domain. They submitted that there is nothing in the docuseries which will impede a fair trial and as such there is nothing detrimental in the docuseries to

3 (2004) 4 SCC 158

the prosecution or to the witnesses or to the co-accused. Learned counsel relied on several judgments in support of their contention that the grounds on which stay of the docuseries is sought, was clearly contrary to all judgments, in this sphere. A compilation of the judgments relied upon were tendered by the Counsel which were taken on record.

5. When the aforesaid petition came up before us on 22nd February 2024, we passed the following order;

“1 Mr. Kadam, learned senior counsel appearing for the respondent No.1 has no objection to the suggestion made by us that the petitioner-CBI should be given an opportunity to view the docuseries. He assures that the screening will be arranged accordingly. Hence, the hearing of the aforesaid petition is deferred.

2 In view of the above, Mr. Kadam, learned senior counsel appearing for the respondent No.1 states that the docuseries will not be aired till the next date. Statement accepted.

3 Stand over to 29th February 2024. To be listed at 2:30 p.m.

All concerned to act on the authenticated copy of this order.”

6. The said order was passed by us having regard to the title of the docuseries "*The Indrani Mukerjea Story:Buried Truth*" and the serious apprehension expressed by the learned ASG about tampering with the witnesses. Pursuant to the said order, the docuseries was viewed by the officers of the CBI as well as the learned ASG. We too were handed over the ID and password to view the said docuseries. Accordingly, we too have viewed the docuseries.

7. Although, Mr. Vyas, learned ASG, submitted that the docuseries will build a public perception and the credibility of the witnesses may be questioned, we are afraid that the same cannot be a reason to stay the release of the docuseries. There is nothing in the docuseries, which is prejudicial to the prosecution nor did we find that the witnesses which are yet to be examined have stated anything prejudicial to the prosecution. Neither has the CBI been able to point out how any witness, has said anything prejudicial to the prosecution case. We cannot stay the

docuseries on the premise that the docuseries having a large viewership, would have an impact on public perception. We are afraid, that public perception cannot be said to be ground for staying the release of the docuseries. It is not in dispute that there are five books released on the Sheena Bora case. The said books are 'The Sheena Bora Case', authored by Mr. Manish Pachouly, a Senior Journalist in the print media; 'Unbroken' authored by Ms. Indrani Mukerjea, an autobiography which includes her first hand experience as an accused in the Court Case; 'Devil's Daughter' authored by Ms. Vidhie Mukerjea, a Witness; 'Sheena Bora' authored by Mr. Sachin Waze and a chapter on Sheena Bora in the book 'Let me say it now' authored by Mr. Rakesh Maria, the then Police Commissioner. There are also two films, released on this case, one of which is 'Dark Chocolate'.

8. No doubt, the docuseries will have a greater viewership. But, merely on the said premise, that the docuseries

having a greater viewership, will impact public perception of the case, cannot by any stretch of imagination be a ground to stay the docuseries.

9. As far as the submission of Mr. Vyas, learned ASG, that the docuseries will seriously prejudice the administration of justice and would impede a fair trial, we are afraid, we cannot accede to the said submission. We may note that mere allegation that there is an apprehension that justice will not be done or that the same will impede a fair trial, without being substantiated by any material on record, except bare words cannot be accepted. Thus, the apprehensions expressed are not such that they show any real and substantial risk of prejudice being caused to the prosecution or much less, any danger to a fair trial. Judges decide cases on evidence adduced by the prosecution and are not concerned with public perception. Infact, Judges by virtue of their judicial training, the office they hold and the oath they take, certainly will not be influenced by any such broadcast. We do

not find that by airing the docuseries, justice will be derailed.

10. We may note that the judgment in *Nilesh Navalakha (Supra)* pertains to trial by media, when the investigation is on-going. Admittedly, this is not one such case. In the present case, the investigation is over and trial has commenced, inasmuch as, about 80 odd witnesses have already been examined.

11. Similarly, the judgment of this Court in *Mushtaq Moosa Tarani (Supra)* relied upon by the learned ASG is concerned, the Apex Court in the case of *Adarsh Cooperative Housing Society Limited v/s Union of India and Others*⁴ has observed in para 7 that ‘*We do not intend to comment on the said decision of the Bombay High Court because we are not aware whether the lis travelled to this Court or not and in any case, the principle stated therein cannot always be a guiding factor. Suffice it to say, the said case has to rest on its own facts.*’

It is pertinent to note that in *Adarsh Cooperative Housing*

4 (2018) 17 SCC 516

Society Limited (Supra), the Apex Court was concerned with the release of a film 'Aiyaary', a feature film. The petitioner therein were all members of the Adarsh Cooperative Housing Society Limited. It was urged by the petitioner therein, before the Apex Court, that the film which was to be released, had projected the petitioner-society in an unacceptable manner and it was likely to have some impact on the litigations which were pending apart from affecting the reputation of the members of the Society. It was urged before the Apex Court by the petitioner-society, that the members of the petitioner-society had built a reputation which was dear to their life and if the film was allowed to be released, the established reputation would be destroyed and that posterity would remember the image projected in the film but not the real image which the members had built over years. The said submission was rejected by the Apex Court.

12. In para 15 of the said judgment, the Apex Court has observed as under;

“15. At this juncture, we may also state that the doctrine of sub-judice may not be elevated to such an extent that some kind of reference or allusion to a member of a society would warrant the negation of the right to freedom of speech and expression which is an extremely cherished right enshrined under the Constitution. The moment the right to freedom of speech and expression is atrophied, not only the right but also the person having the right gets into a semi coma. We may hasten to add that the said right is not absolute but any restriction imposed thereon has to be extremely narrow and within reasonable parameters. In the case at hand, we are obligated to think that the grant of certificate by the CBFC, after consulting with the authorities of the Army, should dispel any apprehension of the members or the society.”

13. As far as the judgment relied upon by the learned counsel for the petitioner therein i.e. on ***Mushtaq Moosa Tarani (Supra)***, the Apex Court in para 7 of ***Adarsh Cooperative Housing Society Limited (Supra)***, has observed as under;

“7. Relying on the said judgment, it is contended by Mr Hegde that as the matter is sub judice, the release of the movie is likely to affect the stream of justice and order of stay of the release of the movie is called for. With all the humility at his command, Mr Hegde has relied upon the decision (Mushtaq Moosa Tarani v/s Government of India & Others 2005 SCC OnLine Bom 385) of the Bombay

High Court which we have referred to hereinabove. We do not intend to comment on the said decision of the Bombay High Court because we are not aware whether the lis travelled to this Court or not and in any case, the principle stated therein cannot always be a guiding factor. Suffice it to say, the said case has to rest on its own facts. ”

14. In view of the aforesaid, reliance placed on the judgment in the case of ***Mushtaq Moosa Tarani (Supra)*** appears to be misplaced. We may note here that Mushtaq Tarani, an accused in the 1993 Blast case had filed a petition before this Court, seeking stay of the film ‘Black Friday’ as it would impact/prejudice his trial.

15. Coming back to the docuseries, we may note that since what is depicted in the docuseries is all in public domain, we do not deem it appropriate to stay the release of the film only because of the mere apprehension of the petitioner–CBI that the docuseries would have an impact on public perception and would impede a fair trial and thereby, impact administration of justice. Admittedly, no steps were taken by the petitioner-CBI at

the time of the release of any of the books or the 2 movies based on the Sheena Bora case.

16. Accordingly, there is no merit in the petition. The petition stands dismissed. We may also observe, that although learned Senior Counsel Mr. Kadam and learned counsel Dr. Chandrachud appearing for the respective respondents questioned the maintainability of this petition, we have not gone into the same, since we were not inclined to entertain the petition, for the aforesaid reasons.

17. The Petition is accordingly disposed of.

All concerned to act on the authenticated copy of this order.

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.