

GAHC010090132020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./350/2020

BORNALI DUTTA BORA
W/O- SRI DULAL BORA, R/O- H.NO.- 118, RAJIV GANDHI PATH,
KAINADHORA TINIALI, P.O. KHANAPARA, P.S. BASISTHA, DIST.- KAMRUP
(M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

2:THE BRANCH MANAGER
STATE BANK OF INDIA
BELTOLA BRANCH
GHY-28
ASSAM

3:THE BRANCH MANAGER
UNITED BANK OF INDIA
KHANAPARA BRANCH
GHY-22
ASSAM

4:THE BRANCH MANAGER
DENA BANK
BELTOLA BRANCH
GHY-28
ASSA

Advocate for the petitioner : Mr. S. Borthakur

Advocates for the respondents : Mr. P. Borthakur, Addl. P.P.
Ms. S. Devi
Mr. G. J. Saikia

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 13.12.2022

Date of judgment & order : 15.05.2023

JUDGMENT & ORDER (CAV)

Heard Mr. S. Borthakur, learned counsel appearing for the petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent No. 1; Mr. G. J. Saikia, learned counsel for the respondent No. 3; and Ms. S. Dev, learned counsel appearing for the respondent No. 4.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973, for de-freezing the petitioner's personal accounts, i.e Salary A/c No. 10821438550 of State Bank of India, Beltola Branch, A/c No. 125210031126 of Dena Bank, Beltola Branch, and A/c No. 030401926553 of United bank of India, Khanapara Branch, which were seized in connection with Hatigaon P.S. Case No. 905/2019 in pursuant to intimation issued by CID Department in connection with CID PS Case No. 27/2019.

3. The brief facts of this case is that on 05.11.2019, an F.I.R. was lodged by one Robin Kumar Baishya before Additional Director General of Police Ulubari, Guwahati, against the husband of the petitioner, namely, Shri Dulal Bora, with some allegation and on the basis of aforesaid FIR, CID P.S. Case No. 27/2019, under Sections 120(B)/500//506/387 of the IPC, was registered. The husband of the petitioner was also arrested in connection with the aforesaid case and subsequently he was granted bail by this Court vide order dated 14.02.2020, passed in BA No. 202/2020. On 04.12.2019 another F.I.R. was lodged by one Nayeemuddin Ahmed against the husband of the petitioner- Dulal Bora with some allegations and accordingly, on the basis of the said F.I.R., Hatigaon P.S. Case No. 905/2019, under Sections 385/389/384/511, was registered. In the said case also, the husband of the petitioner was arrested and subsequently he was released on bail vide order dated 28.01.2020, passed by this Court in BA No. 7/2020.

4. The investigating authority accordingly searched the house of the petitioner in connection with Hatigaon P.S. Case No. 905/2019 and accordingly, seized number of documents/articles from the house of the petitioner along with her 3 (three) numbers of passbooks of three different banks bearing Account No. 10821438550 of State Bank of India, Beltola Branch, Account No. 125210031126 of Dena Bank, Beltola Branch, and Account No. 030401925663 of United Bank of India, Khanapara Branch. When the petitioner was trying to withdraw the money from her personal account, she come to know that her bank accounts have been freezed by the concerned banks and thereafter she immediately check another account and come to know that both the accounts

were seized in pursuant to the investigation made by the investigating agency, though the present petitioners has no relation with the alleged offence and the accounts which have been seized are her personal account.

5. Accordingly the petitioner submitted application on 19.05.2020 before the Branch Manager of concerned banks requesting to de-freeze her account, but the Bank authorities have rejected her prayer stating that her bank accounts are being freezed only in pursuant to letter issued by Criminal Investigation Department in connection with CID Case No. 27/2019.

6. It is further stated that the accounts normally freezes on the basis of any Court order in some case if there is unpaid debt to the creditors or the Government or any other suspicious activities. But, in the instant case, the authorities have freezed the account of the petitioners without having any Court's order and such action of authority is bad in law and hence interference of this Court is necessary. Here in the instant case, from the order it reveals that there is no compliance of Section 102 Cr.P.C. and the investigating agency did not comply the mandatory provision and they have not reported anything in regards to the fact of freezing the petitioner's account. It is further stated that when Section 102 Cr.P.C is invoked, the concerned authority should be informed by the investigating agency about the freezing of his/her account as well as intimation to the concerned Court, but no conditions are being satisfied and in the present case, the bank accounts of the present petitioners are seized. Relying on the decision of Hon'ble Apex Court it is submitted that while freezing any account pursuant to any pending investigation stage, the freezing shall be of for very short duration and period should also be specific and pending

investigation, the bank account cannot be freezed indefinitely. In the instant case, the petitioner is not made an accused, but her accounts are being freezed without any intimation and in violation of statute.

7. The husband of the petitioner was arrested in connection with both the aforementioned cases and the passbooks and personal accounts of the present petitioners were also seized in connection with both the cases, though in no point of time the petitioner is made accused by the investigating agency. More so, from the perusal of the materials on record, it appears that seized accounts are nothing to do with the crime alleged to have been committed by the husband of the petitioner.

8. Accordingly vide the present petition, it is prayed by the petitioner to de-freeze the above mentioned accounts maintained in State Bank of India, Beltola Branch, Dena Bank, Beltola Branch, and United Bank of India, Khanapara Branch. And, accordingly, prayed for a direction to the investigating authority to de-freeze her account so that she can able to operate her personal account forthwith.

9. Vide additional affidavit, it is also intimated by the petitioner that during the pendency of the present case, the investigating authority in CID P.S. Case No. 27/2019 has already submitted Charge-Sheet, vide C.S. No. 7/2019, dated 31.08.2022, and the Charge-Sheet has been forwarded before the learned Trial Court below and the case is pending accordingly.

10. Learned counsel for the petitioner accordingly stressed on the point that

there is no compliance of Section 102 Cr.P.C. which provides that under Section 102 of Cr.P.C. police has given power to seize certain properties.

11. Section 102 of Cr.P.C. read as under:

"(i) Any police officer, may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence;

(ii) Such Police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer;

(iii) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same".

12. The learned counsel further relied on a decision of Hon'ble Apex Court reported in **(2012) 6 SCC 760 [M.T. Enrica Lexie & Anr. Vs. Doramma & Ors.]** and accordingly stressed on para 14 of the said judgment, wherein it is held that under:

"14.the police officer in course of investigation can seized any property under section 102 if such property is alleged to have been stolen or is suspected to be stolen or is the object of the crime under investigation or as directly linked with the examination of the offences for which the police officer investigating into. The property not suspected to be stolen of the offences which is being investigated into by police officer cannot be seized under section 102 Cr.P.C the police officer can seized such property which is covered by section 102 (i)."

13. The learned counsel further relied on a decision of Hon'ble Bombay High

Court, passed in **Criminal Writ petition No. 2434/2018, dated 30.07.2019 [Manish Khandelwal & Ors. Vs. State of Maharashtra through Economic Offences & Or.]**, wherein, the Hon'ble Bombay High Court has held that compliance of Section 102 Cr.P.C. is mandatory in nature and it is the duty of the police officer to report the learned Magistrate as required under Section 102 Cr.P.C. The learned counsel for the petitioner also relied on another decision of Hon'ble Apex Court, passed in **Criminal Appeal No. 1481/2019 [Nevada Properties Private Limited through its Directors Vs. State of Maharashtra & Anr.]**, in respect of non-compliance of Section 102 Cr.P.C.

14. The other point raised by the learned counsel for the petitioner is that the bank accounts of present petitioner were freezed during the investigation of the case without any source of involvement in the case. It is stated that neither she is made an accused in this case and it is also seen that in the Charge-Sheet also, the name of the present petitioner is not been mentioned in this case. But, during the investigation, the police officer or the investigating agency freezed her two bank accounts from Indian Overseas Bank and Dena Bank. In this context, the learned counsel for the petitioner relied on a decision of Hon'ble Karnataka High Court passed in **Writ Petition No. 226989/2020 [Shri Narayan Yadav Vs. State of Karnataka & Ors.]**, wherein, in para 16 and 17 of the said judgment, it has been held as under:

"16. It is the contention that the freezing of bank account of the petitioner was not reported forthwith to the jurisdictional Magistrate, which is mandatory.

17. It is not in dispute that all the four bank accounts o the petitioner have been freeze by virtue of the notice issued by the investigating officer. Certainly such

freezing of account would adversely affect his right to life under Article 21 of the Constitution of India."

15. Accordingly, it is submitted by the learned counsel for the petitioner that all the 3 (three) bank accounts of the petitioner are being freezed by the investigating agency without reporting about the same to the jurisdictional Magistrate which is mandatory in nature and thus mandatory requirement of law is vitiated. Further, it is submitted by the learned counsel for the petitioner that there are materials in the record and it is apparent that those accounts have nothing to do with the crime alleged to have been committed by the husband of the present petitioner. The police also failed to prove any link with the accounts of the present petitioner in the alleged crime and hence, the accounts of the present petitioners are being freezed with some *mala fide* intention of investigating agency and without any authority of law. And accordingly, it is submitted that under this circumstances, the investigating authority may be directed to defreeze the account in the name of the present petitioner, so that it can be operated.

16. In this context, the learned Additional Public Prosecutor, Mr. P. Borthakur, submitted that the status report submitted by the CID in CID Case No. 27/2019, specifically stated that during investigation, the investigating authority had received report from the Assistant Director (PMLA), Enforcement Directorate, Government of India, that while scrutinizing the bank accounts of the accused- Dulal Bora and the present petitioner- Bornali Dutta Bora, along with Puja Bora & M/S DBP Associates, lots of cash transactions in their respective accounts were found, which make it suspicious and for which, the other sources needs to

be further ascertained. Moreover, the Enforcement Directorate is also collecting information regarding movable and immovable assets acquired by the accused- Dulal Bora and his family members, which is disproportionate to their source of income. Further, it is submitted by the learned Additional Public Prosecutor that the cash amount was transferred or deposited to the bank accounts of the present petitioner, including the other family members, from the account of the accused- Dulal Bora and it is alleged that the money which is deposited/transferred to the Bank Accounts of the present petitioner were suspected to be extorted money. Accordingly, it is submitted by the learned Additional Public Prosecutor that the order for de-freezing the bank accounts may not be passed for the interest of proper justice.

17. At the same time, it is also submitted by the learned Additional Public Prosecutor that in Hatigaon P.S. Case No. 905/2019, it is seen that the I.O. has received the report from the Circle Officer, but it is yet to be re-verified and the re-verification report is still awaited and the expert finding from Central Forensic Science Laboratory (CFSL) is also awaited, and the investigation of the case is still pending. Accordingly, the learned Additional Public Prosecutor has submitted that in both the cases therein further requirement of freezing of the bank accounts as the money deposited are considered to be extorted money by the present accused person.

18. So after hearing the submission made by the learned counsel for both sides and after perusal of the LCR in connection with aforementioned case, it is seen that the CID has already filed the Charge-Sheet against the accused- Shri

Dulal Bora along with some other and it is a fact that the name of the present petitioner is not Charge-Sheeted in connection with the said case. But considering the report submitted by the I.O, it is seen that at the time of the filing the Charge Sheet, all the relevant documents, detail report in connection with bank statement and other documents were also sent before the learned C.J.M along with the Charge-Sheet and from the report of the I.O., it also revealed that the Enforcement Directorate already registered a case against the accused- Dulal Bora along with other and they are scrutinizing the bank accounts and it is seen that there was suspicious entry in the bank account of said Dulal Bora along with present petitioner and other family members of the petitioner. However, it cannot be denied that as the case has already been Charge-Sheeted, the I.O may not require for further freezing the bank accounts of the present petitioner for the purpose of investigation. But, it cannot be denied that during the trial and during the time of recording of evidence, the details of the bank accounts may be necessary.

19. Accordingly, I find that the learned Court below will be the best Court to ascertain that as to whether these seized documents will be required for the purpose of evidence during the time of trial and hence, I find that the present petitioner may prefer an application before the learned Court below with prayer for de-freezing the account as stated above.

20. From the status report in connection with Hatigaon P.S. Case No. 905/2019, it reveals that investigation is still under process and the reports from CFSL as well as the report of the Circle Officer are still awaited. However, it is

seen that the case is under process for submission of final Charge-Sheet within very short period of time and accordingly, I find that in this case also the petitioner can file a fresh application praying for de-freezing her bank accounts.

21. Coming to non-compliance of provision of Section 102 Cr.P.C., it is seen that as per the status report filed in connection with CID P.S. Case No. 27/2019, the learned C.J.M. Kamrup (M) was accordingly informed regarding the freezing of Bank accounts immediately on 07.03.2022. Notice was also issued to respective Branch Managers of the Banks under Section 2(a) of Bankers Book of Evidence Act regarding the freezing of accounts in the name of the present petitioner as well as the bank account of the accused and other family members. From the status report filed by the investigating authority in CID P.S Case No. 27/2019, it can be held that there was compliance of provision of Section 102 Cr.P.C. Further, it is also seen that notice was also issued to the Banks under Section 2(a) of Bankers Book of Evidence Act for collection of the relevant bank documents before de-freezing the accounts of the present petitioner along with other account of the accused and the family members of the accused.

22. Considering the discussion made above, I hereby direct the present petitioner to move a fresh application before the learned Court below or before the Trial Court praying to de-freeze the accounts seized in connection with CID Case No. 27/2019 as well as Hatigaon P.S. Case No. 905./2019, whereby, the accounts of the present petitioner were stated to be freezed by the concerned banks on the intimation received from the investigating agency. Accordingly, the

learned Court below will decide the matter in accordance with law. Further, it is seen that the CID Case No 27/2019 has already been Charge-Sheeted, the learned Court below will accordingly consider the prayer for de-freezing the account of the present petitioner and will decide as to whether further freezing of the accounts of the present petitioner are required or not.

23. In view of discussion and direction made above, the present petition stands disposed of.

JUDGE

Comparing Assistant