

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE JUSTICE SRI RAKESH THAPLIYAL

December 28, 2023

Writ Petition No. 3322 of 2023 (M/S)

Shankar Singh Manral

.....Petitioner

Versus

State & Ors.

.....Respondents.

Counsel for the Petitioners:

Counsel for the State:

Counsel for the Bank

Mr. Dushyant Mainali.

Mr. Saurabh Pandey, Brief Holder

Mr. Ashish Joshi, through V.C.

Upon hearing the learned Counsel, the Court made the following Order:

1. By means of this writ petition, the petitioner is praying for the following reliefs:-

(i) *Issue a writ of certiorari quashing the impugned order/communication dated 02.08.2023 issued by the respondent no 2, whereby the petitioner's Punjab National Bank (PNB) savings bank account bearing no. 778300100000758, maintained at Branch Kaniya P.O. Ramnagar District Nainital and the State Bank of India savings bank account bearing no.20068813271, maintained at Ramnagar District Nainital have been freezed. (contained as Annexure No. 1 to this writ petition).*

(ii) *Issue a writ order or direction in the nature of mandamus directing and commanding the respondent no. 3 and 4 to immediately defreeze the petitioner's Punjab National Banck (PNB) savings bank account beaing no. 778300100000758, maintained at Branch Kaniya P.O. Ramnagar District Nainital and the State Bank of India savings bank account bearing no.20068813271, maintained at Ramnagar District Nainital, respectively and may further permit the petitioner to operate his aforesaid bank accounts.*

2. It is contended by the learned counsel for the petitioner that by the impugned order/communication dated 02.08.2023, issued by respondent no. 2 pursuant to which petitioner's Punjab National Bank account bearing no. 7783000200000758, maintained at Branch Kaniya P.O. Ramnagar District Nainital as well as saving bank account bearing no. 20068813271 of State Bank of

India Branch at Ramnagar District Nainital have been freezed without following due process of law. It is further contended by the learned counsel for the petitioner that the petitioner being a cancer patient has thus been deprived to withdraw his own money from the account which he is required for his medical treatment.

3. The petitioner is the registered deed writer, duly registered by the District Registrar, Nainital in terms of U.P. Deed Writer License Rules 1977. The said license was issued in the year 1990 and was renewed time to time up to the year 2019, since, he was suffering from a chronic cancer disease, therefore, he surrendered his license in the year 2019, and enrolled with the Bar Council of Uttarakhand as an Advocate.

4. It is further contended by the learned counsel for the petitioner that the petitioner was implicated in FIR No. 438 of 2019 for the offence punishable under Section 420 IPC as well as in FIR No. 506 of 2019 for the offences punishable under Section 420, 120B IPC and in two more FIRs, i.e., 507 of 2017 for the offence punishable under Section 420 IPC and FIR No. 508 of 2019 for the offence punishable under Section 420 IPC. Consequently, based on the aforesaid FIR, the petitioner was also implicated in FIR No. 0262 of 2023 for the offence punishable under Section 2/3 of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as the Gangsters Act for brevity). Learned counsel for the petitioner submits that the allegations are in relation to the sale deeds executed in the year 2010 to 2012, and after more than 8 to 10 years, delayed FIR were lodged.

5. It is contended by the learned counsel for the petitioner that after lodging of the FIR No. 0262 of 2023 on 23.06.2023, which pertains to the offence punishable under Section 2/3 of the Gangsters Act, a communication was sent by respondent no. 2 to respondent no. 3 & 4-Banks mentioning therein that in view of the ongoing investigation in FIR No. 0262 of 2023, the amount as credited in the saving account of the petitioner is suspicious, and, consequently by the communication dated 02.08.2023, under Section 91 Cr.P.C., request to the Bank-authorities to freeze the saving bank accounts of the petitioner and pursuant to said notice the saving bank accounts of the petitioner were freezed on 03.08.2023. Being aggrieved with the seizure of the saving bank account of the petitioner, the petitioner has preferred the instant petition.

6. On the previous date Mr. Ashish Joshi, learned counsel for the Bank submitted that the letter/order issued by the Investigating Officer is binding upon the Banks and submitted that the Banks have rightly freezed the accounts of the petitioner.

7. Copy of the impugned notice issued by the Investigating Officer dated 02.08.2023, which is also under challenge is also brought on record and on perusal of same it reveals that the Investigating Officer has directed the Branch Manager of the Banks to keep on hold all the transactions in the saving accounts of the petitioner and also to forthwith freeze the saving accounts of the petitioner till the investigation is pending against him.

8. For adjudicating the issue, it is relevant to refer Section 91 of Cr.P.C. which is being reproduced as below:-

91. Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

9. Perusal of Section 91 Cr.P.C., reveals that it does not authorize the court or any police officer to freeze the bank account of any person. Such power, however, is available to a police officer under Section 102 of Cr.P.C., with a caveat as provided in Sub-section (3) of Section 102 of Cr.P.C., namely, the police officer who has seized any property, has to forthwith report the seizure to the concerned jurisdictional Magistrate.

10. The learned counsel for the petitioner submits that in the present case no intimation has been given to the concerned Judicial Magistrate. He further submits that notice, issued under Section 91 Cr.P.C. by the Investigating Officer gives reference of Section 14(1) of the Gangsters Act.

11. For convenience, Section 14(1) of the Gangsters Act is being reproduced herein:-

14. Attachment of property .- (1) *If the District Magistrate has reason to believe that any property, whether moveable or immovable, in possession of any person has been acquired by a gangster as a result of the commission of an offence triable under this Act, he may order attachment of such property whether or not cognizance of such offence has been taken by any Court.*

As it appears from Section 14 (1) of the Gangsters Act the District Magistrate is the authority who may order for attachment of any property, , which has been acquired by the gangster as a result of the commission of an offence triable under the Gangsters Act.

12. The learned counsel for the petitioner submits that before freezing the account of the petitioner pursuant to the notice issued by the Investigating Officer, the District Magistrate has not passed any order of attachment, therefore, seizure of his account merely on the basis of notice issued by the Investigating Officer under Section 91 Cr.P.C., is untenable and wholly unwarranted.

13. Mr. Saurabh Pandey, learned Brief Holder who appears for respondent no. 2-Investigating Officer fairly submits that the bank accounts of the petitioner have been seized merely on the basis of the notice issued by respondent no. 2 under Section 91 Cr.P.C.. He further submits that neither the report of seizure of account of the petitioner has been given to the Judicial Magistrate nor any order which is mandatory requirement as per Section 14(1) of the Gangsters Act was passed by the District Magistrate.

14. Mr. Ashish Joshi, learned counsel who appears for the Bank placed before this Court the judgment rendered by the Co-ordinate Bench of this Court in WPMS No. 2421 of 2023, decided on 29.08.2023 and submits that in view of the judgment passed by the Co-ordinate Bench in the case of *Resizone Buildwell Pvt. Ltd. vs. State Bank of India in Writ Petition (M/S) No. 2421 of 2023*, decided on 29.08.2023, the relief as sought in the petition cannot be granted, since, the respondent-banks on their own has not freezed the account of the petitioner, they have simply followed the direction of the Investigating Officer who has investigated the FIR. Mr. Ashish Joshi, learned counsel further submits that if the Banks had not complied with those directions, perhaps they would have been blamed for non-compliance or non-cooperating a public servant in discharge of his duties and perhaps would have been booked under some penal offences.

15. I have gone through the judgment rendered by this Court but the facts of the present case are entirely different to the facts of the case decided by the Co-ordinate Bench, since, in that case the communication of the Investigating Officer whereby the Bank was asked to freeze the bank account was not under challenge. The Co-ordinate Bench in this judgment also observed as under:-

“As stated, if the petitioner is aggrieved by the communication of the Investigating Officer of the FIR, that could have been challenged, which is not done.”

Here, in the present case, the petitioner is challenging the impugned communication issued by the Investigating Officer under Section 91 Cr.P.C. pursuant

to which the Bank had freezed the accounts of the petitioner.

16. Mr. Dushyant Mainali, learned counsel for the petitioner on the other hand placed before this Court another judgment rendered by the Co-ordinate Bench of this Court in the case of *Mohd. Rizwan Ansari vs. State of Uttarakhand & others, i.e., in WPMS No. 699 of 2021 decided on 17.06.2021* and submits that the Investigating Officer has not fulfilled the condition as per Section 102(3) Cr.P.C., as well as Section 14(1) of the Gangsters Act and issued notice under Section 91 Cr.P.C. to the Bank, and the Bank without application of mind immediately freeze the accounts of the petitioner.

17. I have also gone through the aforesaid judgment and I am fully agreed with the submission, as advanced by Mr. Dushyant Mainali, learned counsel for the petitioner. Apart from this, it transpires from the record that before freezing the accounts by the Bank Officials pursuant to the notice of the Investigating Officer under Section 91 Cr.P.C., the Bank-respondents should have taken into consideration whether the mandatory requirement as provided under Section 102 (3) Cr.P.C. as well as under Section 14(1) of the Gangsters Act has been fulfilled or not. It is very strange that in the present case merely on the basis of the notice issued by the Investigating Officer under Section 91 Cr.P.C., immediately accounts of the petitioner have been freezed. The Bank-respondents have not examined whether those precondition as provided under Section 102(3) Cr.P.C. and precondition as provided under Section 14(1) of the Gangsters Act have been complied

with by the Investigating Officer or not and only on the basis of notice issued under Section 91 Cr.P.C, Bank-respondents have freezed the account of the petitioner. This is certainly a casual conduct of the Bank which is unacceptable and wholly unwarranted.

18. In view of the aforesaid legal position, as discussed above, this Court has no hesitation in holding that the direction issued by the Investigating Officer under Section 91 Cr.P.C., to the Branch Managers to freeze the bank accounts of the petitioner is not sustainable.

19. In such view of the matter, the Banks are not bound to comply with such direction as regards freezing of saving bank accounts of the petitioner.

20. Accordingly, the writ petition is allowed. The respondent banks are directed to de-freeze the saving bank accounts of the petitioner within 24 hours from the date of receipt of certified copy of this order. However, this order will not preclude the Investigating Officer from having recourse to the powers available to him under any other provision of Code of Criminal Procedure.

RAKESH THAPLIYAL, J.

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