

GAHC040001692023



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

Crl.Rev.P./03(AP)/2023

Ahmed Ali Ayubi,
S/o - Lt. Ahad Ali,
Managing Director, Henderson Construction India
Private Limited
R/o – Ali Ahad Lane, Cantonment Area,
Under Dibrugarh Police Station,
District - Dibrugarh, Assam, Pin- 786005.

...PETITIONER

-VERSUS-

1. The State of Arunachal Pradesh.

Represented by Addl. P.P.

2. Smti. Likha Yapi,

W/o – Shri Likha Saaya,
R/o- P-Sector, Nirjuli,
P.O/P.S.- Nirjuli,
District – Papumpare, Arunachal Pradesh.

3. Mr. Kalley Rijuju,

S/o – Lt. Najai Rijuju,

R/o- Nabolong, Seppa,

District – East Kameng, Arunachal Pradesh.

Present Address- Niti Vihar, Itanagar,

District- Papumpare, Arunachal Pradesh.

4. The Branch Manager,

IndusInd Bank, Beltola Branch,

Ground floor 60, Beltola,

Basistha Road, Chandan Nagar,

Beltola Tiniali, Guwahati, Assam

PIN No.- 781028.

....RESPONDENTS

Advocate for the petitioner : Mr. B. K. Mishra, Adv.

Advocate for the respondents : Ms. L. Hage, Addl. P.P.

Mr. K. Tama, Adv, for R-1 & 2

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 30.01.2024

Date of Judgment & Order : 03.05.2024

JUDGMENT & ORDER (CAV)

Heard Mr. B. K. Mishra, learned counsel for the petitioner. Also heard Ms.

L. Hage, learned Additional Public Prosecutor for the State respondent No.1 and Mr. K. Tama, learned counsel for the respondent Nos. 2 and 3.

2. This is an application filed under Section 397 of Cr.P.C. *read with* Section 401 and 482 of the Code of Criminal Procedure, 1973, challenging the order dated 12.01.2023 passed by the learned Judicial Magistrate First Class, Capital Complex, Yupia, Arunachal Pradesh [in short Id. JMFC, Yupia] in Zimmanama No.50/2022.

3. The brief fact of the case is that; on 15.11.2022, one Kalley Rijuju/respondent No.3 resident of village- Nabolong, under the Police Station- Lada/Seppa, East Kameng District lodged a written First Information Report(FIR) before the Officer-in-Charge, Itanagar Police Station, alleging *inter-alia* with the allegation of criminal conspiracy, cheating against the present petitioner which was accordingly registered under Itanagar P. S. Case No. 0281/2022 under Sections 120B/467/468/471/420/406 of the Indian Penal Code. It is stated that the petitioner is not all involved in the alleged offence as stated in the FIR dated 15.11.2022. In fact, the petitioner has stated that the entire case is completely different than alleged in the aforesaid FIR and brings in brief the following facts;

3.1. One company, namely M/s. Suwarna Buildcon Private Limited, having its registered office at A 309, Shoppers Orbit, Alandi Road, Vishrantwadi, Pune, Maharashtra- 411015, has been allotted a contract work, namely, "Construction of High Altitude Hill Road from Ladda to Besai in North East Kameng District on EPC Mode". On being allotted, the aforesaid contract work, the M/s. Suwarna Buildcon Private Limited entered into an agreement with another company

namely, M/s. Ramjo Pordung having its registered office at Type 1 Colony, Seppa, East Kameng District, whereby, it has been agreed that M/s. Ramjo Pordung company will execute the contract work on behalf of and/or sub-contractor of the M/s. Suwarna Buildcon Private Limited.

3.2. Thereafter, the said M/s. Ramjo Pordung company after executing a considerable amount of said contract work; requested another company, namely, M/s. Henderson Construction India Private Limited [represented by the present petitioner] in consultation with the said M/s. Suwarna Buildcon Private Limited, to execute the remaining contract work. Accordingly, an agreement in this regard was also executed between the parties i.e the petitioner's company and M/s. Suwarna Buildcon Private Limited. Thus, the said contract work has been executed by the petitioner's company [i.e. the Henderson Construction India Private Limited] as a sub-contractor under an agreement with the satisfaction of all concerned.

3.3. After getting the sub-contract, the petitioner's company entered into another agreement with one M/s. S & Y Builder and Developments represented by the respondent No.2 in the present petition; as local partner for construction of the said High-Altitude Hill Road from Ladda to Basai. As per the agreement dated 29.10.2022, the respondent No.2 credited an amount of Rs.4,15,00,000 (Rupees four crores fifteen lakhs) only to the petitioner's company i.e. M/s. Henderson Construction India Private Limited and the said amount was deposited on 05.11.2022 into the bank account of the petitioner's company maintained in IndusInd Bank.

3.4. Subsequent to all those developments; some disputes arose amongst the

petitioner's company, M/s. S & Y Builder and Developments [represented by the respondent No.2] and M/s. Suwarna Buildcon Private Limited. However, all the parties were agreed to sort out their disputes amicably amongst them; the petitioner's company had sent notice Invoking Arbitration dated 23.11.2022 to the M/s. S & Y Builder and Developments [represented by the respondent No.2] and to the M/s. Suwarna Buildcon Private Limited which have duly been received by the respective companies.

3.5. Meanwhile, the respondent No.3 lodged an First Information Report(FIR) dated 15.11.2022 against the petitioner by bringing some frivolous, vexatious and malicious allegations not backed by any true facts and records. Though, the respondent No.3 has clearly stated that the entire transaction of Rs.4,15,00,000/- (Rupees four crores fifteen lakhs) only has been made by him only.

3.6. After coming to know about the lodging of the First Information Report(FIR), the present petitioner moved an anticipatory bail application being AB Case No. 134/2022 ***[Ahmed Ali Ayubi @ Ahmed Ali vs. The State of Arunachal Pradesh]*** before this Court and vide order dated 06.12.2022, the petitioner was granted with interim protection directing him to appear before the IO in connection with Itanagar P. S. Case No.0281/2022 on 09.12.2022. But, due to fear of life and security to visit the Arunachal Pradesh, the petitioner failed to comply with the direction provided vide order dated 06.12.2022. As such, the petitioner had sought for further extension of time and the same was allowed by this Court. Meanwhile, the petitioner also approached before the Hon'ble Supreme Court by filing a Special Leave Petition being SLP No. 12650/2022, for alteration/modification of the interim order dated 06.12.2022

passed by this Court in AB Case No.134/2022.

3.7. But, vide order dated 04.01.2023, the Hon'ble Apex Court was pleased to dismiss the Special Leave Petition preferred by the petitioner. This Court, after perusing the Case Diary, and after hearing both the parties had rejected the anticipatory bail application and also vacated the interim protection granted to the petitioner vide order dated 06.12.2022 passed in AB Case No. 134/2022.

3.8. After rejection of the anticipatory bail application, the petitioner preferred one RTI application under the RTI Act, 2005, seeking information about any such FIR registered against the petitioner. Pursuant to the RTI request of the petitioner, vide order dated 01.02.2023, the Regional Manager & CPUO, RBO-3, Zonal Office, Kolkata, informed the petitioner that the "SBI Kolkata Branch has not filed any complaint/FIR against the M/s. Henderson Construction India Private Limited or Ahmad Ali Ayubi within 60 days". But, at the time of final hearing of AB Case No.134/2022, this Court was misleded with some factual parts materials to the case.

3.9. When all these developments took place, the respondent No.2 has filed one zimma application being numbered as Zimmanama Case No. 50/2022 before the Id. JMFC, Yupia with a prayer to release an amount of Rs.3,60,00,000/- (Rupees three crore sixty lakhs) only lying into the frozen account of M/s. Henderson Construction India Private Limited represented by the petitioner. As such, vide order dated 12.01.2023 passed in Zimmanama No.50/2022, the Id. JMFC, Yupia had passed the order in favour of the respondent No.2.

3.10. In pursuant to the said order dated 12.01.2023, an amount of

Rs.75,22,158/- (Rupees Seventy-five lakhs twenty-two thousand one hundred fifty-eight) only has been debited from the account of the petitioner's wife maintained in the IndusInd Bank, Beltola Branch. The petitioner came to know about the said transaction only when he received a mail from the said Bank.

3.11. While, passing the order dated 12.01.2023, the Id. JMFC, Yupia failed to consider the materials facts on record as well as failed to follow the basic principal of natural justice of being heard to the person whose right has ultimately been affected by the said order passed.

4. On being highly aggrieved and dissatisfied with the order dated 12.01.2023 passed by the Id. JMFC, Yupia in Zimmanama Case No.50/2022, the petitioner preferred this petition.

5. It is submitted by the learned counsel for the petitioner, Mr. Mishra that there are huge contradiction of materials facts and disputing claims made by the respondent Nos. 2 and 3 in connivance, and has misled the entire issues to get the favorable order and to cause prejudice to the petitioner. He also submitted that while disposing the zimmanama Case No.50/2022, no notice was served to the petitioner and thereby, he has been deprived from his legitimate right of being heard; which clearly violates the principal of natural justice and hence, the impugned order dated 12.01.2023 passed in zimma No.50/2022 is bad in law and as such the same is liable to be set aside and quashed.

6. The learned counsel for the petitioner further submitted that the petition was filed for claiming the money, though the money was not seized only the bank account was seized. He also submits that the matter is still under investigation, as to whether the bank guarantee provided is fake or not;

secondly it is being disputed that whether the seizure is legal or illegal and whether the police has the power to seize the account. Further, it is seen that only one witness was there, though as per Section 100 Cr.P.C. minimum 2 Nos. of witnesses are required at the time of seizure. Also, the seizure was not reported to the Magistrate which is required under the law before the seizure of the account. Thus, it is seen that the seizure itself is illegal.

7. In addition to his submission, Mr. Mishra, the learned counsel for the petitioner relies on the decision passed by this Court in ***Criminal Revision Petition No.37/2022 dated 07.04.2022 [Pranab Kumar Ghosh vs. Central Bureau of Investigation (CBI)]*** and mainly emphasized on paragraph No.23 of the said judgment which read as under:-

“23. So far as the other compliance of the provision of [Section 102](#) CrPC, it reveals that there is no evidence to show that the petitioner was served any notice about such search and seizure by the investigating officer and their assertion that they have been verbally informed is of no substance as the petitioner came to know all about the seizure of accounts after several days of seizure from the bank on the query made by them when they are not allowed to operate the accounts. Case diary is silent on all about such compliance. Furthermore, there is another blatant violation of the provision of [Section 102 \(3\)](#) of the CrPC. Under the said provision, the matter of seizure is to be reported to the Magistrate having jurisdiction forthwith, but from the matters on record and even from the impugned order it reveals that I/O has informed the court about such seizure on 17.08.2021 only after filing of the petition by the petitioner for defreezing the account on 12.08.2021. It is evident that although the search and seizure was made on 22.06.2021 but same was not reported to the court forthwith/ or its own notion but only when the court sought for the information on the basis of the petition filed by the petitioner. The same reply of the I/O cannot be regarded as a mandatory compliance under [Section 102\(3\)](#) Cr.P.C.”

8. He further submitted that the learned Court below had given the zimma of the seized account/money of the petitioner’s wife who is not a party to the agreement as well as without deciding the facts and the ownership. Accordingly,

the learned Court below had given the zimma of an amount of Rs.75,22,158/- (Rupees Seventy-five lakhs twenty-two thousand one hundred fifty-eight) only which has been deducted from the account of the petitioner's wife maintained in the IndusInd Bank, Beltola Branch, without giving an opportunity of hearing to the present petitioner.

9. In support of his submission, he relies on another decision of this Court reported in **2018 (2) GLT 84 [Kohinoor Pulp & Paper PVT. LTD. Vs. The State of Assam and Ors.]**, wherein, he relies on paragraph Nos. 16 and 20 of the said judgment which read as under:-

“16. It is further noticed that upon consideration of a petition supported by an affidavit filed under Section 451 Cr.P.C. and the report of the investigating officer and also, on being satisfied that the respondent No. 3 is the registered owner of the seized crane, it was directed that the seized crane be handed over in interim zimma of him and rejected the objection petition filed on behalf of the present petitioner, herein on the ground, inter-alia, that Section 451 Cr.P.C. simply empowers the Court to give zimma of articles, who prima-facie satisfies about the ownership of the articles and that Section 451 Cr.P.C., does not empower the Court to enter into and decide dispute which is of civil nature as that has arisen between the parties. It may pertinently be noted that the respondent No. 3, the registered owner of the crane was not a party to the agreements entered into between the petitioner-company and the respondent No.2-firm.”

20. Applying the above principle of law propounded by the Apex Court, this Court is of the view, that the learned Magistrate while giving interim custody of the seized crane legally exercised the power conferred on him under Section 451 Cr.P.C. and accordingly passed the impugned order of interim custody of the crane to its registered owner i.e. the respondent No. 3, who was neither a party to the aforesaid agreements entered into between the petitioner. Therefore, this Court is of the considered view that the learned Magistrate has not committed any error or illegality while giving the interim safe custody of the disputed crane pending trial of the case to the respondent No. 3 and consequently, no interference is called for in the impugned orders.”

10. In compliance with Section 102 of Cr. P. C., he relies on another decision

passed by the ***Co-Ordinate Bench in Criminal Revision No.310/1990 dated 13.09.1990.***

11. On the other hand, the case of the respondent No.2 as per her affidavit-in-opposition is that the respondent No.3 had introduced the present petitioner who introduced himself as the Managing Director of M/s. Henderson Construction India Private Limited and proposed the present respondent No.2 to enter into an agreement with the petitioner in regards to "Construction of High Altitude Hill Road from Ladda to Besai in North East Kameng District. Accordingly, there was an agreement between the petitioner representing the M/s. Henderson Construction India Private Limited and the respondent No.2 representing the M/s. S & Y Builder and Developments on 29.10.2022. As per the said agreement, the respondent had already paid Rs.3,00,00,000 (Rupees three crores) only to the petitioner as a margin amount against the Bank guarantee furnished by the petitioner. However, at the request of the petitioner, the respondent No.2 also paid Rs.1,15,00,000 (Rupees one crore fifteen lakhs) only as a clearance amount for the liabilities of the petitioner's firm against the project work. But, the respondent No.2 was shock and surprise after finding the bank guarantee furnished by the petitioner for the said work was fake. After coming to know about the furnishing of the fake bank guarantee, she immediately tried to communicate with the petitioner, but, he did not gave any proper answer and made some lamp excuses. Subsequently, the petitioner did not make any response to the call of the respondent No.2 and hence, the respondent No.2 instructed the respondent No.3 to lodge an FIR.

12. During the course of the investigation, 12 Nos. of bank accounts of the petitioner were frozen and thereafter the respondent No.2 filed zimma petition

being numbered as No.50/2022 on 19.12.2022, before the Id. JMFC, Yupia which was allowed vide order dated 12.01.2023. Out of the 12 numbers of frozen bank accounts, the Id. JMFC, Yupia had directed to transfer the money from 7 bank accounts to the respondent No.2 company's account only with a condition that the she shall execute an indemnity bond at the rate of 3% per annum against the amount of Rs.3,61,91,873 (Rupees three crores sixty-one lakhs ninety-one thousand eight hundred seventy-three) only and on conclusion of trial or at any point during trial or as directed by the Court, the respondent No.2/applicant shall indemnify the amount along with interest as mentioned above. Thus, subject to above conditions, the zimmanama was allowed in favour of the respondent No.2.

13. More so, the petitioner had also forged the signature of Biri Kakum by falsely apprising the Court of learned Sessions Judge that the parties have entered into a settlement agreement with regard to financial transaction in a similar case i.e. Itanagar P.S. Case No.73/2023 for which said victim/Biri Kakum also lodged an FIR dated 26.03.2023 for the forgery committed by the present petitioner. There are other cases too which has been lodged against the present petitioner with an allegation of cheating and misappropriation. Apart from that, the Bank Manager of SBI, Kolkata also lodged an FIR for production of fake bank guarantee against the present petitioner. Accordingly, it is stated that the Id JMFC, Yupia had committed no error or mistake while passing the order of Zimmanama, rather, the petitioner ought to have return the remaining amount of Rs.80,00,000/- (Rupees eighty lakhs) only to the respondent without creating any obstacles which is kept as FD in the bank account of his wife.

14. The learned counsel for the respondent Nos. 2 and 3, Mr. Tama has

submitted that the learned JMFC, yupia passed the order under Section 457 of Cr.P.C. and thus, the revision petition is not maintainable under the said Section. Further, vide impugned order dated 12.01.2023, the learned JMFC, yupia had granted interim custody to the respondent No.2 with a condition that the she shall execute an indemnity bond at the rate of 3% per annum against the said amount and on conclusion of trial or at any point during trial or as directed by the Court.

15. He further submitted that showing the fake bank guarantee only the petitioner induced the respondent No.2 to pay such a huge amount of money. He further submitted that, if the seizure is improper or illegal, the petitioner can approach before the appropriate forum for the same. Accordingly, he submitted that the learned Trial Court has not committed any mistake or error by disposing the zimmanama in favour of the respondent No.2 under Section 457 of Cr. P.C. and thus, no interference is required.

16. Mr. Tama, learned counsel for the respondent Nos. 2 and 3 relies on the decision passed by the Hon'ble Delhi High Court reported in ***1985 SCC online Del 382 [Smt Anisa Begum vs. Massom Ali & Ors.]*** and emphasized on paragraph Nos. 12, 13 and 14 of the said judgment which read as under;-

“12. Still later the Supreme Court explained the nature and scope of an interlocutory order in [V.C. Shukla v. State](#), . While reaffirming its earlier decision in [Amar Nath](#) (supra), and expressing its agreement with the exposition of law by the learned Judges in Madhu Limaye, S. Murtaza Fazal Ali, J., who spoke for the majority, observed :

"We might reiterate here even at the risk of repetition that the term "interlocutory order" used in the [Code of Criminal Procedure](#) has to be given a very liberal construction in favor of the accused in order to ensure complete fairness of the trial because the bar contained in [Section 397\(2\)](#) of the Code would apply to a variety

of cases coming up to the courts not only being offences under the Penal Code but under numerous Acts. If, therefore, the right of revision was to be barred, the provision containing the bar must be confined within the four corners of the spirit and the letter of the law. In other words, the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi final."

13. His Lordship summed up the legal position saying that the essential attribute of an interlocutory order is that it merely decides some - point or matter essential to the progress of the suit or collateral to the issue sought but not a final decision or judgment on the matter in issue.

14. In view of the aforesaid criteria an order under [Section 451](#) of the Code must be said to be essentially interlocutory in nature. [Section 451](#) empowers a criminal court to make such order as it thinks fit for the proper custody of the property produced before it during any inquiry or trial, pending conclusion of the inquiry or trial. The purpose of such an order obviously is to preserve the property either as evidence or in order to make a proper order after the case is over. No doubt, [Section 451](#) gives wide discretion to the court to make orders for proper custody of the property pending trial but it does not confer jurisdiction upon it to investigate and decide the question of title or ownership of the rival claimants to the property. An order under [Section 451](#) is not intended even to decide the right of the parties to pass on the property produced before the court and it is only intended to ensure proper custody of the property during the pendency of the trial. Of course, the order being discretionary in nature the Court has to exercise the discretion vesting in it judicially keeping in view all the circumstances of the case. In the process the Court may incidentally be guided by the consideration as to who is the person prima facie entitled to the possession of the case property and hand over its possession to him with a view to safeguard his interest but that may not be the sole consideration for the Court while entrusting custody.....So, the order of the learned Magistrate cannot be said to suffer from any judicial or legal infirmity. It cannot be said to be even unjust, improper or capricious as adversely affecting the rights of the respondent. By no stretch of reasoning it can be said to be a "matter of moment" as envisaged in [Amar Nath](#) (supra).

17. In this regard, Ms. L. Hage, learned Additional Public Prosecutor has submitted that the impugned order passed under Section 457/457 (2) of Cr.P.C. can be term as an interlocutory order and hence, the revision petition is not

maintainable. She also submitted that only the interim custody was given with some condition to the respondent No.2 and hence, there is no reason to make any interference in the order passed by the learned Trial Court.

18. After hearing the submissions made by the learned counsels for both sides, I have perused the case record as well as the relevant documents and the order passed by the learned JMFC, yupia vide order dated 12.01.2023 in Zimmanama No.50/2022. Basically ,it is the case of the petitioner that the zimma petition was allowed in favour of the respondent No.2 by the learned Trial Court without considering the fact that the respondent No.3 lodged an FIR against the petitioner with some false, frivolous and vexatious allegations only after some dispute amongst the petitioners' company; M/s. S & Y Builder and Developments represented by the respondent No.2 and M/s. Suwarna Buildcon Private Limited. During the pendency of the investigation, the respondent No.2 approached before the learned Court below with an application for zimma to release the amount of Rs.4,15,00,000 (Rupees four crores fifteen lakhs) only which was deposited in the IndusInd Bank maintained by the petitioner. Accordingly, the learned JMFC, Yupia had allowed the zimma petition in favour of the respondent No.2, and thus, the learned counsel for the petitioner has submitted that the order passed by the Trial Court is illegal and same liable to be set aside.

19. In pursuant to the order of the learned Court below an amount of Rs. 75,22,158/- (Rupees seventy-five lakhs twenty-two thousand one hundred fifty-eight) is already debited from the account of the wife of the petitioner maintained in IndusInd Bank, Beltola Branch, and after receiving the information through mail only, the present petition has been filed against the

order dated 12.01.2023. In the instant case, the plea of the petitioner is that the said zimma petition was allowed in absence of the petitioner without giving him the opportunity of hearing. **20.** More so, the another issue raised by the petitioner is that there was no proper compliance of Section 102 of Cr.P.C., during the time of seizure or freezing the bank account of the present petitioner maintained in IndusInd Bank. In the same time, it is also the case of the petitioner that the allegation of the respondent No.2 that the petitioner issued a fake bank guarantee to obtain an amount of Rs.4,15,00,000 (Rupees four crores fifteen lakhs) only is still under investigation. Hence, it is not the stage to held that the bank guarantee which was furnish by the petitioner was fake bank guarantee.

21. On the other hand, it is the case of the respondent No.2 that the learned court below had rightly passed the order on zimma after considering all the aspect of the case along with with a condition that she shall execute an indemnity bond at the rate of 3% per annum against the said amount and on conclusion of trial or at any point during trial or as directed by the Court. It is further contended by the respondent No.2 that by producing the fake bank guarantee, the petitioner induced the respondent No.2 to deposit a huge amount of money of Rs.4,15,00,000 (Rupees four crores fifteen lakhs) only in the account of IndusInd Bank, Beltola Branch of the petitioner. However, during the investigation it has come to the light that the petitioner had transferred his money to his wife account's and hence, the learned Court below had to passed an order for the release of money from the account of petitioner's wife which was deposited by the petitioner.

22. From the perusal of the record, it is seen that during the pendency of the

investigation, the entire amount of Rs.4,15,00,000 (Rupees four crores fifteen lakhs) only received from the respondent No.2 had already been transferred in the bank account of the petitioner's wife and in the accounts of some other person. In this regard, the IO has also collected the bank statement during the investigation. It is an admitted fact that there was an agreement to complete the "Construction of High Altitude Hill Road from Ladda to Besai in North East Kameng District. Accordingly, the petitioner as well as the respondent No.2 and the proprietor of M/s. Suwarna Buildcon Private Limited entered into an agreement and subsequent to the agreement with the respondent No.2 i.e the M/s. S & Y Builder and Developments an amount of Rs.4,15,00,000 (Rupees four crores fifteen lakhs) only was transferred to the account of the firm of the petitioner No.2 maintained in Beltola Branch. At the time of passing of the order, the learned Court below also obtained the report from the IO, wherein, the bank statement revealed that the petitioner not only transferred the amount to his wife's account, but he transferred the amount to some other persons accounts, which was deposited by the respondent No.2 on his furnishing the bank guarantee which is alleged to be a fake bank guarantee. The learned Trial Court made a detail discussion about the transaction and transfer of account in the order passed by the learned Court below. For the ready reference two paragraphs of the order passed by the learned JMFC, Yupia is extracted below;

"Records further reveal that the amount deposited into the account of the firm of the accused M/s. Henderson Construction India Pvt. Ltd. was further disbursed into 12 different accounts. During the course of investigation, the IO of the case seized and froze the 12 accounts. The same has been reported to this Court and the seizure memos have been produced before this Court. As per the report of the IO on 05.11.2022 amount of Rs.3,00,00,000/- and Rs.1,15,00,000/- were transferred from the account bearing No. 65450400000387 of M/s. S & Y Builders into A/C No.259954155555 of M/s. Henderson Construction India Pvt. Ltd. From the account of

M/s. Henderson Construction an amount of Rs. 15,00,000/- was transferred to the account of Hasnain Akhtar, Rs. 1,65,00,000/- to the account of Sadia Khatoon, wife of Ahmed Ali Ayubi and Rs.2,55,00,000/- to M/s. Henderson Infracom, account holder Ahmed Ali Ayubi. Further, from the account of M/s. Henderson Infracom an amount of Rs.15,00,000/- transferred to Soubhagya Kr. Beuria, Rs.5,10,000/- to Bonoshree Borthakur and Rs.59,50,000/- was transferred to the personal account of Ahmed Ali Ayubi. From the personal account of Ahmed Ali Ayubi he transferred money to four different persons.”

23. Further, it is observed by the learned Court below that the present petitioner also transferred the money from his personal account to different persons accounts and the details has been mentioned in the order passed by the learned Court below, which read as under;

“It is seen that from the personal account of Ahmed Ali Ayubi money was transferred to four different persons namely zubair Ahmed, Shaheed Kadarkhan Pathan, Shaban Parween and Siddique Ahmed. However, the said persons are fourth party in the transaction chain. Therefore, at this stage I do not consider it appropriate to pass any order for transfer of money from their account to the account of the applicant.”

24. Accordingly, the learned Court below did not find it proper to pass any order of transfer of money from the accounts of other persons, where the money has been transferred from the personal account of the petitioner’s. Thereafter, considering the entire details of the transaction, the learned Court below specified the accounts as well as the money to be released in favour respondent No.2 amounting to Rs.3,61,91,873/- (Rupees three crore sixty-one lakhs ninety-one thousand eight hundred seventy-three) only. Further from the order of the learned JMFC, Yupia, it has been revealed that during the time of investigation, 12 Nos. of accounts were de-freeze which was reported and produced along with the seizure memo before the learned Court below. As per the report of the IO, on 05.11.2022, an amount of Rs.3,15,00,000 (Rupees

three crores fifiteen lakhs) only were transferred from the account of M/s. S & Y Builder and Developments into the account of M/s. Henderson Construction India Private Limited.

25. Further, from the seizure memo, it is seen that the seizure was made in presence of the witnesses and the seizure memo were also produced before the learned Court below by the IO. However, there may not be a total compliance of the proviso of Section 100/102 of Cr.P.C., however, this issues can be raised before the appropriate forum. But, the present petition has been filed against the order passed by the learned Court below dated 12.01.2023, whereby, the petition under Section 457 of Cr. P.C. was disposed of, by releasing the money from the seven numbers of bank accounts which were transferred by the petitioner from his IndusInd Bank account to different persons accounts including his wife, after obtaining the said amount from the respondent No.2 on furnishing a bank guarantee which is alleged to be fake. In the same time, it also cannot be denied that only interim custody was given to the respondent No.2 which is an interlocutory order.

26. Thus, I find that no illegality has been committed by the learned Court below while allowing the zimmanama in favour of the respondent No.2 under Section 457 of Cr.P.C. Though, it is a fact that the investigation is still under process, but from the report of the IO, it is seen that the seized money is not required for further investigation. The investigation is still under process only to know the fact that whether the bank guarantee's furnished by the petitioner was fake or genuine one. However, it is seen that the interim custody was given with a strict condition that the respondent No.2 shall execute an indemnity bond at the rate of 3% per annum against the said amount and on conclusion of trial or

at any point during trial or as directed by the Court.

27. In the result, I find no merit in this petition and accordingly, the same stands dismissed. However, there shall be no order as to cost. Consequently, the interim order dated 09.02.2023 stands vacated.

JUDGE

Comparing Assistant