IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 1050 OF 2014

Avinash @ Sanjay S/o Shankar Sagale Patil,
Age : 45 years, Occu : Business,
R/o. Mote Niwas, Newasa, Tq. Newasa,
Dist. Ahmednagar. **...Petitioner**

Versus

State of Maharashtra **...Respondent**

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Shri. S. G. Ladda, Advocate for the petitioner
Shri. P. P. More, APP for respondent/State

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CORAM : SMT. SADHANA S. JADHAV, J.
DATED : APRIL 8TH, 2015.

ORAL JUDGMENT : -

. Heard. Rule. Rule made returnable forthwith with the consent of parties.

2. The petitioner herein questions the correctness and validity of the order passed by learned District Judge-1 and Additional Sessions Judge, Newasa dated 25th August, 2014 thereby directing the petitioner to furnish Bank guarantee in respect of the amount standing in his bank accounts with banks named in para No. 4 within one month

from the date of such order and also to furnish detail account/information as to how amount is credited to his account before Investigation Officer. The background of the present case is that, on 20th January, 2014, wife of the present petitioner lodged a report at Newasa Police Station alleging therein that, she was cheated by the present petitioner. That, she is an advocate practicing in the Sessions Court at Shrirampur. That, she had come across a matrimonial column in 'Daily Loksatta' newspaper. She had spotted the proposal of the present petitioner, who happened to be qualified as B.E. (Mechanical) and earning salary of Rs.50,000/- per month. She had contacted the petitioner. She was informed that, he works as a Government Contractor for ONGC Company. That, he has one step sister and step mother. The complainant was allegedly informed by the petitioner that his wife had expired. Thereafter, there had been talks between the parties. On 1st November, 2009 the petitioner got married to the complainant at Aurangabad, as per Hindu customs and rituals. She was residing with him at Meera Road. Since the complainant was practicing at Shrirampur, they decided to stay at Shirdi. She was informed that, he has taken an agency of Gas Inverter. She believed him. After some days, he had requested her that they should shift to Thane. They started residing at Ghodbandar Road, Thane. According to her, she had conceived pregnancy and, therefore, had shifted to Newasa in the year 2010. The couple was blessed with a baby girl on 10th June, 2011. That, the petitioner had informed the complainant that since the tender of BSNL filled in and submitted by him was passed, he is in need of Rs. 10.00 Lakhs. Her mother and relatives had given an amount of Rs. 7,50,000/-. They had also given him 10 tolas gold. The couple had jointly purchased 21 gunthas land at Newasa. On 13th January, 2014, she was informed by the police that, one Shaila had lodged a report at Aurangabad. She learnt that the officers of Crime Branch Aurangabad were looking out for him. The officers had come to her house to arrest him. At that stage, she learnt that the petitioner had cheated Shaila. She had also got married to the petitioner upon reading matrimonial column. That, the complainant was convinced that she has been cheated by the petitioner. She had gone through the records and had learnt that he is a father of three daughters and two sons. On the basis of her report, crime No. 71 of 2014 was registered against the present petitioner for the alleged offences.

3. The petitioner was protected under Section 438 of the Indian penal Code by the Sessions Court at Newasa. In the course of investigation, the police had seized the account extracts of the petitioner from the banks. That, he was restrained from operating his bank accounts in (1) Nasik Merchant Bank Account No. 5858. (2) T.J.S.B. Bank Branch Nasik Account No. 16SB/9082. (3) Shamrao Vitthal Co-Op. Bank Branch Dahisar Account No. SB/GEN/841/903203130000841. (4) Balaji Co-Op. Bank Nasik, Account No. 171. (5) State Bank of India, Branch Newasa Account No. 33168250682. (6) Axis Bank, Branch Ghodbandar Road, Thane, Account No. 910010010842978. On 2nd July, 2014, the petitioner filed an application under Section 457 of Cr.P.C. for releasing bank accounts. The learned JMFC, Newasa vide judgment and order dated 9th June, 2014 was pleased to reject the said application. It was

observed by the learned JMFC that the offences alleged against the petitioner are serious. That, the petitioner's account is property within meaning of Section 102 of Code of Criminal procedure and police officer in course of investigation can seize or prohibit operation of bank account and hence, the application was rejected.

4. Being aggrieved by the said order, the petitioner had filed a revision application No. 26 of 2014, before the Sessions Court at Ahmednagar. The learned Sessions Court vide judgment and order dated 25th August, 2014, has allowed the revision application partly by imposing stringent conditions upon the petitioner.

5. Learned Counsel for the petitioner submits that, in fact, this is a case of matrimonial dispute and an offence under Section 420 of IPC in all probabilities is made out against the petitioner however, it does not warrant seizure of the bank accounts. Learned Counsel for the petitioner, upon instructions, submits that the petitioner and the complainant were not operating any joint accounts. That,

there is no allegation in respect of any commercial transaction. The complainant has only made an allegation that her parents had given him Rs. 7.50 Lakhs and that he has deposited the same amount in various banks. It is pertinent to note that the Investigating Officer has seized the bank accounts and the same would reveal that as to whether the amount which was given by the parents and relatives of the complainant has been deposited in the said account. In any case, the prosecution case in respect of the matrimonial dispute cannot be treated as a recovery proceeding. The learned Sessions Judge has directed the petitioner to furnish bank guarantee in respect of the amount standing at his bank accounts. In fact, the petitioner was also gainfully working as a Contractor and that he must have deposited the amount earned from his business in the said bank accounts. He was protected under Section 438 of the Cr.P.C. The investigation is in progress. This Court is of the opinion that, since this is a prosecution arising out of a matrimonial dispute, the conditions imposed by the Sessions Court are not proper. It is a matter of evidence that it can be adduced at the time of trial. Hence, the order passed by the learned Sessions Judge dated 25th August, 2013 deserves to be quashed and set aside. The following order is passed.

ORDER

(i) The writ petition is allowed.

(ii) Order passed by the learned District Judge-1 and Additional Sessions Judge, Newasa dated 25th August, 2013 is hereby quashed and set aside.

(iii) The petitioner shall cooperate with the Investigating Agency and report to the Investigating Officer as and when called in connection with Crime No. 23 of 2014 registered at Newasa Police Station, Newasa, Dist. Ahmednagar, and furnish the details as called for.

(iv) The petitioner shall be permitted to operate his bank accounts viz. (1) Nasik Merchant Bank Account No. 5858. (2) T.J.S.B. Bank Branch Nasik Account No. 16SB/9082. (3) Shamrao Vitthal Co-Op. Bank Branch Dahisar Account No.

SB/GEN/841/903203130000841. (4) Balaji Co-Op. Bank Nasik, Account No. 171. (5) State Bank of India, Branch Newasa Account No. 33168250682. (6) Axis Bank, Branch Ghodbandar Road, Thane, Account No. 910010010842978.

(v) The Investigating Officer of Crime No. 23 of 2014 shall not restrain the petitioner from operating any of the bank accounts and shall give a letter to the concerned Banks indicating therein that this Court has permitted the petitioner to operate his bank accounts.

Rule made absolute in aforesaid terms with no order as to costs.

(SMT. SADHANA S. JADHAV, J.)

sgp