

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

CRIMINAL WRIT PETITION NO. 730 OF 2017

Nizar Nuruddin Lalani,
Age : 46 Years, Occ. Business,
R/o. Karimabad Housing Society,
Khoja Colony, Nanded.

.. PETITIONER

VERSUS

State of Maharashtra,
Through Police Station Officer,
Itwara, Police Station,
Nanded. District Nanded.

.RESPONDENT

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Mr. Satyajit S. Bora, Advocate, for the Petitioner.

Mr. A.A. Jagatkar, Addl. Public Prosecutor for Res.-State.

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CORAM : PRAKASH D.NAIK, J.

DATE : 8th NOVEMBER, 2017

PER COURT :-

The petitioner has preferred this petition with prayer for quashing and setting-aside the order dated 22nd December, 2016, passed by learned Additional Sessions Judge, Nanded in Criminal Revision No. 33 of 2015 as well as order dated 12th February, 2015,

passed by the learned 5th Judicial Magistrate, First Class, Nanded in Summery Criminal Case No. 1672 of 2014.

2. Brief facts which are necessary to adjudicate the issue involved in this petition are as follows :-

(a) The Assistant Commissioner, Municipal Corporation, Nanded, filed a complaint under Section 171(B), 188 of Indian Penal Code and 123 of Representation of People Act. In the said complaint, it was alleged that, on 14th October, 2014, the informant received information that the amount is being distributed to the Voters at the residence of the petitioner as allurement for voting. In pursuance to the said information, the Police visited the spot on the same day and found that, some persons had gathered at the spot. It is alleged that cash amount of Rs. 9,29,310/- and other articles as well as documents were found at the said place. The F.I.R was registered vide C.R. No. 77 of 2014 with Itwara Police Station Nanded on 15th October, 2014.

(b) The petitioner preferred Misc. Criminal Application No. 838 of 2014 before the Court of 5th Civil Judge, Junior Division, Nanded on

18th October, 2014 under Section 457 of the Code of Criminal Procedure. It was contended that, no offence as alleged was committed by the petitioner and he is being falsely implicated in the said crime.

(c) After hearing both the sides the Court partly allowed the application vide order dated 18th November, 2014 and released articles like Mobile phone, Pen Drives, SD Cards to the petitioner on his executing indemnity bond further directed the investigating agency to draw photographs of the articles before releasing in favour of the petitioner. However, prayer for releasing the currency notes was rejected.

(d) On the basis of First Information Report the charge-sheet was filed and the case was registered as Summery Criminal Case No. 1672 of 2014 which is pending before the Court. The charge- sheet was filed on 15th December, 2014. The petitioner preferred another application for return of the seized amount before the Court of Judicial Magistrate, First Class, Nanded under Section 451 of the Code of Criminal Procedure. The application was opposed by the prosecution, contending that the amount and the documents are

essential part of the evidence and same should not be returned to the petitioner. The learned Magistrate vide order dated 12th February, 2015 rejected the said application on the ground that the earlier request of the petitioner has been rejected by the Court and only on account of mere filing of the charge sheet there is no change in the circumstances to prefer the second application.

(e) Being aggrieved by the order dated 12th February, 2015, the petitioner preferred Criminal Revision No. 33 of 2015 before the Sessions Judge, Nanded wherein it was contended that trial Court has failed to consider the purpose of the Section 451 in its proper perspective and has wrongly rejected the application. The application was pending before the Sessions Court for long period of time, By order dated 22nd December, 2016 the Additional Sessions Judge was pleased to reject the said application. Hence, the petitioner has approached this Court by invoking the jurisdiction of this court under Article 227 of the Constitution of India.

3. The learned Advocate for the petitioner submits that, there is non application of mind on the part of the Courts below while

passing the impugned orders. The reasons assigned by the Courts below are contrary to law. The Courts have not taken into consideration the object of the Section 451 and failed to exercise the powers. The Sessions Court has rejected the application by passing cryptic order.

4. It is submitted that the application preferred by the petitioner was earlier opposed at the instance of the prosecution on the ground that the identity of currency notes is in question and same cannot be handed over to the petitioner. It is submitted that on account of demonetization the currency notes, were deposited in the Treasury of the Government and hence presently the said objection does not survive. Hence there is no embargo in releasing the said property to the petitioner.

5. The Courts below ought to have decided the application judiciously. The Courts below ought to have appreciated that there was no necessity of keeping the currency notes in the custody of the Police till the decision of the trial. There was no impediment for

releasing said property on certain conditions. It is submitted that the Courts have failed to take into consideration the contentions of the petitioner in respect to cash amount which was seized by the investigating agency. The penal provision invoked by the police were not attracted against the petitioner. He is a businessman and an Income Tax Payee. The amount was seized from the office of the petitioner and not from his residence, as alleged in the First Information Report. The petitioner is in need of the said amount and there was no reason to refuse the prayer of the petitioner for releasing the said amount. The Courts failed to appreciate that at the time of the seizure investigating agency did not find any incriminating material such as political party's flags, election campaign material, posters, banners, pamphlets, Voters ID Cards of Voters etc. No voter was present at the time of seizure. It is further submitted that the petitioner had produced the cash book Account showing source of cash balance lying in his office at the time of seizure, and therefore, amount ought to have been permitted to be released to the petitioner on certain terms and conditions. It is submitted that the orders does not indicate as to why the property i.e. currency notes seized are

necessary at the time of trial. It was not alleged that the currency notes were fake and there was no impediment for releasing the same. Genuineness of the notes was verified and they were found to be genuine. The orders passed by the Courts are silent as to why same were required to be preserved till pendency of the trial. The learned counsel placed reliance on the decision of the Supreme Court in the case of **Sunderbhai Ambala Desai and C.M. Mudaliar Vs. state of Gujarat AIR 2003SC638** it is submitted that taking into consideration the aforesaid aspects the order passed by the Courts below may be set-aside and seized property may be released to the petitioner on any terms and conditions as this Hon'ble Court may deem fit and proper.

6. Learned A.P.P strongly opposed the relief sought by the petitioner. It is submitted that, there is prima facie evidence against the petitioner showing his involvement in the commission of the offences. The Police have completed the investigation and filed a charge sheet in the Court. The petitioner is involved in the serious crime and the property i.e. currency notes should not be directed to

be handed over to the petitioner. The amount which is seized is the subject matter of the proceeding and the same is required during the trial. The petitioner cannot be permitted to use the said currency notes during the pendency of the trial. The custody of the said notes cannot be given to the petitioner even on any terms and conditions. It is submitted that the trial Court as well as the Revisional Court has assigned reasons for rejecting the application preferred by the petitioner and considering the observations made by the Courts in the said orders, no interference is called and said orders are not required to be set-aside. It is submitted that the petitioner has not made out any case for grant of relief as prayed for by him. The distribution of the amount to the voters is a serious crime and therefore, the currency notes which were seized by the Police during the course of investigation should not be released in favour of the petitioner. The submissions advanced by the petitioner that, there is no evidence to support the charge leveled against the petitioner cannot be considered in this application. It is therefore, submitted that the petition preferred by the petitioner may be rejected.

7. The petitioner had submitted application at Exh. 18 on 22nd December, 2016 before the trial Court after declaration of the demonetization of the currency notes of Rs. 500/- and Rs. 1,000/- and sought prayers that the Police be directed to deposit the seized amount of Rs. 9,29,310/- in any Nationalized Bank in Fixed Deposit to avoid serious complications in the future and to protect his interest. The Court called for say of the prosecution and thereafter, vide order dated 27th December, 2016 rejected the said application, while rejecting the said application the Court opined that there is no express provision in Criminal Manual about depositing seized currency notes in Fixed Deposit. However, Police preferred an application vide Exh. 15/A on 14th December, 2016, before the trial Court with request to pass order for depositing the seized amount in the Account of Government Treasury. The Court by order dated 15th December, 2016, directed that the amount be deposited in the Account of Government Treasury.

8. I have perused the material on record, also perused orders passed by both the Courts. The courts have assigned proper reasons

for rejecting the relief sought by the petitioner *qua* the seized amount. There is no reason to set-aside the said orders. The investigating officer had resisted the application preferred by the petitioner. The amount was seized during the period of election. The said amount was seized from the petitioner. It is subject matter of the offences for which the charge-sheet has been filed against the petitioner and the trial is pending. It is prosecution case that when investigating party has reached the place of seizure they found documents mentioning the bond number, booth number, area and the amount distributed to the persons in the office of the petitioner. The offences under Section 123 of the Representation of Peoples Act, and Section 171 (B), and 188 of Indian penal Code were registered. On the basis of material on record the trial Court has observed that the said seized amount is the subject matter of the offences leveled against the applicant. The submissions of the petitioners that the charges leveled against him are not attracted cannot be considered at this stage. The documents relied upon by the petitioner to support his claim that the amount was received in respect to some genuine transaction cannot be considered while adjudicating the said

application. It is prosecution case that seized amount was kept along with the papers wherein Wards numbers, Booth numbers, were reflected. The Sessions Court while rejecting the revision application of the petitioner has considered all the aspect relating to the seizure and by assigning reasons on rejecting the said application. The petitioner is the resident of Khoja Colony, Nanded. The documents reveals that on 14th October, 2014 there was election of Legislative Assembly in the State of Maharashtra. The complainant received the secret information that accused is distributing the amount to the voters, accordingly he along with panchas conducted the raid and seized the said amount. The panchnama was duly prepared while seizing the amount. It is prosecution case that the accused was distributing the amount to the voters. The said amount was wrapped in the paper having booth number. The learned Sessions Judge has observed that, considering the documents on record it appears that the amount is seized during the Model Code of Conduct and the amount was for distribution of the same to the voters. The trial Court therefore, rightly held that the amount is subject matter of the case. No case is made out for returning the said amount to the petitioner.

The Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai and C.M.Mudaliar Vs. state of Gujarat** referred by the Advocate for petitioner has considered the scope of Section 451 of Code of Criminal Procedure. It has been observed that the Court should exercise the powers under Section 451 of Code of Criminal Procedure expeditiously and judiciously. Articles cannot be kept for a period of time at Police Station. It is also observed that the owner of the article would not suffer because of property remaining unused or by its misappropriation. The Supreme Court has made aforesaid observations in the context of the fact that Court was considering the prosecution wherein F.I.R was lodged by the Commissioner of Police stating that the Police personnel were involved in the offences wherein they were working at various Police Station and had committed offence of replacement of muddemal articles which were kept at the Police Station. The Court had considered the aspect of keeping the article at Police Station for a long period of time by not adhering to the procedure prescribed under Code of Criminal Procedure which creates difficulties for keeping in the safe custody.

9. It is pertinent to note that in the present case the currency is lying in the Government Treasury and there is no apprehension of the same being misused or misappropriated. In the circumstances there is no reason to interfere with the orders passed by the Trial Court and the Sessions Court. The learned counsel for the petitioner also submitted that the seized amount which is lying in the Government Treasury can be directed to be deposited in Nationalized Bank by way of Fixed Deposit Receipt. It is submitted that the petitioner had preferred the application before the Trial Court seeking the said relief which has been rejected on the grounds that there is no provision to pass the such order. Taking into consideration the fact that the amount seized is not directed to be returned to the petitioner and instead of keeping the amount in the Government Treasury the same can be directed to be deposited in any Nationalized Bank as Fixed Deposit Receipt. No prejudice would be caused to the prosecution. In case it is found during the conclusion of the trial that the amount is not involved in the offences and that the petitioner is entitled for the said amount the interest would be earned in case the amount is deposited in the Nationalized Bank by

way of Fixed Deposit Receipt.

10. Hence I pass the following order.

ORDER

- (i) Criminal Writ Petition No. 730 of 2017 is rejected.
- (ii) The order dated 22nd December, 2016 passed by the Additional Sessions Judge-4, Nanded in Criminal Revision No. 33 of 2015 and the order dated 12th February, 2015, passed by the learned 5th Judicial Magistrate, First Class, Nanded in Summary Criminal Case No. 1672 of 2014 are confirmed.
- (iii) The trial Court is directed to deposit the seized amount in any Nationalized Bank by way of Fixed Deposit Receipt, during the pendency of the proceeding in Summary Criminal Case No. 1672 of 2014 pending before the Court of 5th Judicial Magistrate, First Class, Nanded.

[PRAKASH D.NAIK, J.]