IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2817 OF 2019

Jalaj Bharatkumar Dave. ..Petitioner.
Versus
State of Maharashtra & Another. ..Respondents.

Mr. D. N. Salvi, Sahil Salvi, Anuja Churi, Aditya Raktade for the Petitioner.
Mr. Deepak Thakare, PP with Mr. K. V. Saste, APP for the Respondent-State.
Mr. Sunil R. Pandey for Respondent No. 2.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.
Date : **June 17, 2019**.

P. C. :

1. Heard the learned counsel for the Petitioner, the learned counsel for Respondent No.2 and the learned PP for the Respondent-State.

2. Dr. D. B. Marg Police Station has registered an FIR bearing CR No. 81 of 2019 on 7th May 2019 for the offence punishable under sections 408 and 420 of the Indian Penal Code, 1860. The said FIR is registered at the instance of one Shubham M. Kothari- Respondent No.2 herein. The allegation made in the said FIR is that employee of the complainant was instructed to transfer an amount of Rs.55 lakh to the bank accounts of Pihu Enterprises by RTGS mode, the said employee of the complainant instead of transferring that amount in favour of Pihu

Enterprises, transferred the said amount to the accounts of Shree Bharat Traders in its bank account maintained with IDFC Bank having Account No.10030436809. It is further alleged that the Petitioner in turn transferred the said amount of Rs.55 lakh in his six personal / firms accounts.

3. The learned counsel for the Petitioner does not dispute that the amount of Rs.55 lakh was received in the Petitioner above bank account, from Pihu Enterprises' bank account. He submitted that the Petitioner was surprised and therefore under a *bonafide* belief, to keep the said amount safe, transferred the said amount in six bank accounts of his family members / firms.

4. The Petitioner is not arraigned as accused in the said FIR. The Petitioner's said bank account of Shree Bharat Enterprises as well as those six accounts wherein the amount of Rs.55 lakh was transferred came to be freezed and therefore, the Petitioner has approached this Court for defreezement of those six accounts.

5. The learned counsel for the Petitioner makes a statement that the Petitioner is ready and willing to transfer the said amount of Rs.55 lakh to the complainant's (Respondent No. 2 herein) bank account in the event those six accounts and his firm's accounts are de-freezed.

6. Since the only allegation made in the FIR is that the said amount of Rs.55 lakh was transferred to the Petitioner's account by the employee of Respondent No.2 and since the Petitioner claims to be

ignorant about the said transfer and further he is ready and willing to re-transfer the said amount to complainant–Respondent No. 2 herein, we are inclined to grant relief in favour of the Petitioner.

7. Statement of the Petitioner that on defreezement of those six bank accounts, the amount of Rs.55 lakh will be transferred to Respondent No.2's bank account, is accepted as an undertaking to this Court.

8. We direct the investigating officer of the subject FIR to inform the respective banks where the said amount has been deposited / transferred by the Petitioner, to defreeze the said accounts. The entire exercise shall be carried out within a week from today.

9. At this stage, the learned counsel for the Petitioner submitted that since the Petitioner is not arraigned as accused in the siad FIR, and the said amount of Rs.55 lakh is directed to be transferred to the account of Respondent No.2, the Petitioner may be granted protection from arrest. The relief is vehemently opposed by the learned PP for the Respondent-State. He submitted that investigation in the said FIR is going on and therefore this relief cannot be granted as the police are investigating into the role of Petitioner *vis-a-vis* the role of said employee of Respondent No. 2. In the backdrop of these facts and circumstances, we are of the opinion that limited protection can be granted to the Petitioner. We, therefore, direct that in the event the police intends to arrest the Petitioner and comes to the conclusion that the Petitioner has

some role in the subject FIR, the police shall give 72 hours prior notice to the Petitioner.

10. With the aforesaid directions, writ petition is disposed of.

[SMT. BHARATI H. DANGRE, J.] **[RANJIT MORE, J.]**