

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3225 OF 2019

Shivamsinh S/o. Vijaysinh Deshmukh	]	
Constituted Attorney of	]	
Aarti Vijaysinh W/o. Deshmukh	]	
& Satyamsinh S/o. Vijaysinh Deshmukh	]	
Through all the Legal Heirs of Late	]	
Vijaysinh S/o. Shahjirao Deshmukh	]	
Vide authorized POA dated 11th January, 2019	]	
Age : 23 year, Occ : Professional,	]	
Residing at 41/203, Excel Soc,	]	
Azad Nagar 2, Veera Desai Road,	]	
Andheri (West), Mumbai - 400 053.	]	...Petitioner

VERSUS

- | | | | |
|-----------|--|---|-----------------------|
| 1. | Suresh Bhagwandas Rohra |] | |
| | Age : 67 Years, Occ : Retired, |] | |
| | Residing at 34-B, 1st Floor, Collector |] | |
| | Colony, Chembur, Mumbai - 400 074 |] | |
| 2. | Sujaram Motaram Chaudhary |] | |
| | Age : 50 Years, Occ : Nil, |] | |
| | R/s. at Building No. 127/4482, |] | |
| | Tilak nagar, Chembur, Mumbai - 400 089. |] | |
| 3. | The State of Maharashtra |] | ...Respondents |

Mr. Prashant G. Pandey for the Petitioner.
 Mrs. M.R. Tidke, APP for Respondent – State.
 Mrs. Chitra Salunke a/w. Mr. Utsav Salunke i/by. Salunke and Co. for
 Respondent No. 2.
 Mr. Hanumant Kale, PSI Chembur Police Station present.

CORAM : S.S. SHINDE, J.
RESERVED ON : 20th AUGUST 2019
PRONOUNCED ON : 11th SEPTEMBER 2019

JUDGMENT

1. This Petition taken an exception to the order dated 13.12.2018 passed by the Learned Metropolitan Magistrate 11th Court at Kurla, Mumbai in 1476/MISC/2018 in Case No. 1575/PW/2011 thereby rejecting the application for defreezing the accounts.

2. The facts for prosecution case discloses in the Petition, in nutshell as under :

It is the case of the prosecution that, from 14.10.2008 to 18.08.2010, accused No. 1 (deceased) forged MHADA documents and stamps along with other accused persons by name Mehul Shah duping the present complainant and other 24 persons by representing themselves as MHADA brokers to invest a sum of Rs. 92,08,500/- (Ninty Two Lacs Eight Thousand Five Hundred only) on the pretext of allotting a flat. That, the said amount was collected by Respondent No. 1 from the Respondent No. 2 and other 24 persons by way of cash and cheque and deposited in the account of M/s. Samarth marketing and Co. in their account at ICICI Bank, Charkop, Oriental Bank, Charkop Maharashtra State Co-op bank, Umarchadi, Co-op Bank, Goad and in

the account of Ma.Havre and Deshmukh Associates. That, all the bank accounts were came to be freezed by the office of Respondent when the clear picture revealed. That, the total sum in the Bank Account of deceased is Rs. 2,33,13,655/- (Rs. Two Crore Thirty Three Lacs Thirteen Thousand Six Hundred Fifty Five only). That, Respondent No. 2 - Complainant filed FIR bearing CR No. 463/2010 dated 08.10.2010 registered by Respondent No. 3 for the offence punishable under Sections 420, 465, 467, 468, 471, 201, 34 of the IPC against the accused persons.

3. It is the case of the prosecution that, after completion of investigation the office of Respondent has filed charge-sheet before the Learned Metropolitan Magistrate, 11th Court, at Kurla, Mumbai. Petitioners preferred an application before the learned Metropolitan Magistrate for defreezing bank account.

4. On 13.12.2018 learned Metropolitan Magistrate, 11th Court, at Kurla, Mumbai vide impugned order rejected the application filed by the Petitioner for defreezing bank account. Hence this Writ Petition.

5. Learned counsel appearing for the Petitioner made

following submissions.

It is submitted that, when all the victims have given no objection for defreezing of account, then State could not have objected, since there is practically no victims. When there is a case abated due to his death, against the prime accused as alleged in charge sheet can his legal heirs be deprived of utilizing money which is not part of the present crime, by way of seizure and attachment under Section 102 of Cr.P.C. by investigation agency. When all the victims are bound to get their dues and they have no will to prosecute the case, there can be defreezing of account pending the trial.

6. Learned counsel further submits that, it is pertinent to note that, the office of Respondent No. 3 had freezed 9 bank accounts of the deceased Late. Vijaysinh s/o. Shahajirao Deshmukh in the course of investigation. That, the amounts lying in the said Bank Accounts sums upto Rs. 2,33,13,655/- whereas the claim in the present FIR pertains to only to Rs. 92,08,500/- out of which most in cash. The details of the Bank Account of the deceased Late. Vijaysinh S/o. Shahajirao Deshmukh is as below:

Sr. No.	Bank name and Branch	Account Number	Account Name.

i.	ICICI Bank, Charkop Branch	058505000405	M/s. Samarth Marketing and Co.
ii.	Oriental Bank of Commerce, Charkop	12471131001467	M/s. Samarth Marketing and Co.
iii.	Oriental Bank of Commerce, Charkop	12471011000085	M/s. Samarth Marketing and Co.
iv.	The Maharashtra State Co-op Bank, Ltd., Umarkhadi Branch	404	M.H.A.D.A.
v.	The Maharashtra State Co-op Bank, Ltd., Umarkhadi Branch	357	M.H.A.D.A.
vi.	Oriental bank of Commerce, Charkop	12471011000078	M/s. Indian Agro Marketing and Co.
Vii.	Oriental bank of Commerce, Charkop	12471131000316	M/s. Nirbhaya Mantralaya Times.
Viii.	Oriental bank of Commerce, Charkop	12471131001351	M/s. Yuva Foundation Solapur.
ix.	Corporation Bank, Goa Branch	000097	M/s. Samarth Marketing and Co.

7. Learned counsel further submits that, the complainant along with other claimants / witnesses had given their respective consent vide affidavits thereby giving no objection to allow the Misc. Application No. 1476 of 2018 preferred by the present petitioners, in lieu of their claims being appreciated. It is pertinent to note that, the Respondent No. 1 – Accused No. 2 also filed consent affidavit thereby giving no objection to allow the Misc. Application No. 1476 of 2018 preferred by the present Petitioner. No purpose will be served by

keeping the bank accounts frezzed as every person related to the present case are deprived from their respective claims.

8. That, the money lying in the bank accounts of the deceased is a hard earned money in his entire life span with a sole moto for the better future for his children. That, the mother of the present Petitioner is undergoing some serious ailments like thyroid, joint pains, etc, which results in regular visits at the hospitals for routine check-ups and the drugs prescribed are expensive. That, the mother of Petitioner has obtained a student loan from Punjab National bank to borne the heavy education fees of her son. It is pertinent to note that, the money solely belongs of the Petitioner and his family members as they are the legal heirs to late Vijaysinh Shashajirao Deshmukh.

9. Learned APP appearing for the Respondent – State invites attention of this Court to the reasons assigned by the Trial Court and submits that, yet the case is not finally decided by the said Court and therefore, prayer of the Petitioner is rightly rejected by the Trial Court. It is submitted that, in the case of Adarsh Co-op Hsg. Society Ltd. Vs. Union of India and others reported in 2011 (4) Mh.L.J. (Cri), wherein the Division Bench of the Bombay High Court, has taken a view that

the amount lying in the bank accounts which creates suspicion about the commission of crime cannot be allowed to be depleted. Learned APP submits that, in case the accused are acquitted, the question of return of property would arise and in that case the Trial Court will have to pass an appropriate orders on conclusion of Trial.

10. Heard learned counsel appearing for the Petitioner and learned APP appearing for the Respondent – State so also the learned counsel appearing for the Second Respondent. The Trial Court in the impugned judgment has mentioned that, before filing the application by the present Petitioner for de-freezing account of his father i.e. original accused no. 1 and accused no. 2 i.e. Sujaram Motharam Chaudhary, filed the applications for de-freezing the account however, the Court kept the said application pending, and ordered that the said application be heard at the time of final hearing. Therefore, one of the reason assigned by the Trial Court is that already the Trial Court has passed the order on the application filed by the accused no. 2 and therefore, it is not appropriate to consider the application of the Petitioner when the application of the accused no. 2 is to be heard at the time of final hearing. I have carefully perused the reasons assigned by the Trial Court and in particular the observations made by the

Division Bench of this Court in the case of Adarsh Co-operative Housing Society Ltd. (Supra) and also other reasons assigned in the impugned order and I am of the opinion that the petition deserves no consideration. It is true that the claimants so also accused no. 2 have consented for allowing the application filed by the Petitioner, however, the arguments advanced by the learned APP cannot be brushed aside. On conclusion of proceedings before the Trial Court, the Trial Court will have to pass the necessary orders about the seized property and accounts which are freezed. Therefore, the reasons assigned by the Trial Court are legally sustainable and needs no interference. However, it needs to be noted that, the one of the reason given by the Trial Court in para no. 7 is that, about six witnesses have been examined by the prosecution and the matter is part heard, and trial can be concluded at the earliest. However, the Registry has received report from the Additional Chief Metropolitan Magistrate, 11th Court, Kurla, Mumbai before whom the case is pending that, the CC No. 1575/PW/2011 is pending and next date fixed for hearing is on 21st October 2019.

11. In the light of the discussion made herein above, an ends of justice would be met in case the Trial Court is directed to decide the

aforesaid proceedings as expeditiously as possible and preferably by the end of December 2019. Therefore, keeping in view pendency of said proceedings for long time and the fact that, six witnesses were examined by the prosecution way back i.e. 13.12.2018, while passing the impugned order, the Trial Court is directed to expedite the hearing of the aforesaid proceedings and decide it as expeditiously as possible however, in any case by the end of December 2019 including rendering final decision. After such final judgment is pronounced, the Trial Court shall send compliance report to this Court. With the above observations Writ Petition stands rejected.

(S.S. SHINDE, J.)