IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 751/2017

Nagaraju Samayya Putta
..VS..
State of Maharashtra, Thru PSO, PS Aheri, Dist. Gadchiroli

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri S.P. Dharmadhikari, Sr. Adv a/b Shri S.V. Sirpurkar, Adv for applicant
Shri S.V. Manohar, Sr. Adv a/b Shri V.P. Maldure, APP for the non-applicant

CORAM : Z.A.HAQ, J.
DATED : 16/01/2019

Heard.

By this application under Section 482 of the Code of Criminal Procedure, the applicant has challenged the order passed by the learned Additional Sessions Judge, rejecting the application filed by the applicant praying that the amount of Rs. 1,76,71,360/- seized by the Investigating Agency be released on Supratnama.

On 23/05/2017, the applicant was going in a jeep alongwith two others and he was apprehended by the police and an amount of Rs. 75,00,000/- was seized from the jeep. FIR was registered and the applicant and the other persons were taken in custody. In further investigation, an amount of Rs. 01,01,71,360/- was seized at the instance of the applicant from Raje Dharmarao School, Welgure. Crime No. 58/2017 for the offences punishable under Sections 17, 18 and 21 of the Unlawful Activities (Prevention) Act, 1967 (for short “the

Act of 1967") is registered. According to the prosecution, an amount of Rs. 1,76,71,360/- which is seized was intended to be given to terrorist organization. According to the prosecution, this amount is deposited in the bank as per the order passed by JMFC, Aheri on 08/06/2017.

The applicant filed an application before the Sessions Court praying that the amount seized from him be released on Supratnama in his favour. This application is dismissed by the impugned order.

The learned Senior Advocate appearing for the applicant has pointed out the provisions of Section 25 of the Act of 1967 and has submitted that retention of the amount by the Investigating Agency is illegal as the cash seized by the Investigating Agency is not produced before the Designated Authority as required by Section 25 (3) of the Act of 1967. It is submitted that because of the failure on the part of the Investigating Agency to produce the cash before the Designated Authority for such a long period, the applicant is deprived of the amount and also is unable to take further proceedings as per Section 25 (6) of the Act of 1967. It is submitted that in the facts of the case, specially considering that the Investigating Agency is not acting fairly, and without any justification the cash is not produced before the Designated Authority for such considerable time, the amount seized by the Investigating Agency be released in favour of the applicant.

The learned Senior Advocate appearing for the non-applicant has submitted that the argument made on behalf of the applicant relying on the provisions of Section 25 (3) of the Act of 1967 is mis-directed. It is submitted that the cash was seized in exercise of the powers conferred by Section 25 (5) of the Act of 1967 and not under Section 25 (1) of the Act of 1967 which requires prior approval of the Director General of the Police of the State for such seizure. It is argued that the cash is required to be produced before the Designated Authority if the seizure is under Section 25 (1) of the Act of 1967, with the prior approval of the Director General of Police of the State. It is argued that if the cash is seized without the prior approval of the Director General of Police of the State, under Section 25 (5) of the Act of 1967, the only requirement is that the matter of seizure of the cash should be before the Designated Authority within 48 hours and such authority has to pass an order allowing its retention beyond 48 hours and if this is not done, then the cash seized by the Investigating Agency has to be released. It is pointed out that after seizure of the cash, the matter of seizure of the cash was before the Designated Authority and the Designated Authority passed an order on 25/05/2017, within 48 hours of seizure of the cash, permitting retention of the seized cash. It is submitted that the order passed by the Designated Authority permitting retention of the seized cash is appeallable under Section 25 (6) of the Act of 1967, however, the applicant has not filed appeal till today. It is further pointed out that the order passed by the Court under Section 25 (6) of the Act of 1967 is further appeallable before this Court under Section 28 of the Act of 1967. The submission on behalf of the non-applicant is that the provisions contained in Chapter V of the Act of 1967 provides for complete scheme regarding forfeiture of the proceeds of terrorism or any property intended to be used for terrorism and for seizure and release of the seized property. Emphasizing on the availability of the two appeals, one under Section 25 (6) of the Act of

1967 and the other under Section 28 of the Act of 1967, to seek revocation of the order of seizure and release of the seized property, it is argued that the power/jurisdiction under Section 451 of the Code of Criminal Procedure cannot be exercised to release the cash seized under Section 25 of the Act of 1967.

It is undisputed on behalf of the applicant that the order dated 25/05/2017 permitting retention of the seized cash is passed by the Designated Authority. The learned Senior Advocate appearing for the applicant has admitted that the applicant has not challenged the order passed by the Designated Authority on 25/05/2017. The learned Senior Advocate appearing for the applicant has not been able to point out any provision which lays down that if the seized cash is not produced before the Designated Authority within the stipulated time or the Designated Authority fails to pass any order within 48 hours of seizure or attachment, confirming the seizure or attachment, the seized cash or attached property has to be released. The only provision providing for release of the seized cash is found in the proviso below Section 25 (5) of the Act of 1967 and the seized cash has to be released if the Designated Authority fails to pass an order allowing retention of the seized cash beyond 48 hours. In the present case, admittedly, the Designated Authority has passed on order on 25/05/2017 permitting retention of the seized cash beyond 48 hours.

As recorded earlier, the submission on behalf of the non-applicant/State is that the provisions of Chapter V of the Act of 1967 prescribe for the complete mechanism for seizure of retention and release of the cash/property. Even the arguments made on behalf of the applicant are on the same lines and the grievance is that action is not taken as contemplated under Section 25 (3) of the Act of 1967. In these facts, the remedy available to the applicant seeking redressal of his grievance would be under Chapter V of the Act of 1967 and not under Section 451 of the Code of Criminal Procedure.

Considering the facts and the above provisions, I find that the order passed by the learned Additional Sessions Judge dismissing the application filed by the applicant for release of the seized cash on Supratnama, which perhaps has to be under Section 451 of the Code of Criminal Procedure, cannot be faulted with. Hence, I see no reason to interfere with the impugned order.

The criminal application is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

Ansari