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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 4782/2019 and CM APPL. 21326/2019

HITIK MALHAN ..... Petitioner

Through: Mr. J.K. Mittal and Mrs. Vandana Mittal, Advocates.

Versus

THE STATE OF TELANGANA & ORS. ..... Respondents

Through: Mr. Prashant Tyagi and Mr. P. Srinivas Reddy, Advocates for R-1.
Ms. Ruchi Kapur, Advocate for R-3 and R-4.
Mr. R.S. Chaggar, Advocate for R-6.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **05.09.2019**

The petitioner has preferred the present writ petition to seek a declaration that the freezing of the petitioner's bank accounts by respondent No.1 vide communication dated 11.03.2019 addressed to the Managers of the concerned banks is illegal. The petitioner seeks quashing of the notice dated 11.03.2019 issued by the Station House Officer, Police Station, Madhapur, Cyberabad District under Section 91 of the Cr.P.C. The petitioner also seeks a direction for de-freezing of his bank accounts.

The petitioner has enlisted the particulars of his bank accounts which have been frozen, which are as follows:

Hitik Malhan			
Bank Name	***Account No.***	***Branch***	***Status***
HDFC Bank	*03291000060301*	*Vasundhara Enclave, Delhi*	*Frozen*
HDFC Bank	*07281930010161*	*Sector 50, Noida*	*Frozen*
IndusInd Bank	*100021371496*	*Sector 18, Noida*	*Frozen*
Equitas Bank	*100000971734*	*Sector 18, Noida*	*Frozen*
Yes Bank	*001499300003006*	*Sector 63, Noida*	*Frozen*

Notice in this petition was issued to the respondents since the petitioner claimed that the freezing of his aforesaid bank accounts was without any basis. The respondent No.1 filed the counter-affidavit dated 03.07.2019, which appears to have been filed on 29.08.2019. The same has not come on record. Counsel for respondent No.1 has tendered a copy of the same which we have taken on record.

On a perusal of the writ petition as well as the counter-affidavit, it appears that FIR No. 180/2019 has been registered at PS Madhapur, District Cyberabad on 05.03.2019 under Sections 406, 420 and 506 IPC and Sections 3, 4, 5 & 6 of the The Prize Chits And Money Circulation Schemes (Banning) Act, 1978 against several persons, including Pawan Malhan, who is the father of the petitioner.

The crux of the allegations made against the accused in the said FIR is that the accused are running a money circulation scheme whereunder they collected moneys to the tune of Rs. 16,821/- from persons who are enrolled as members and the persons who are enrolled as members are required to similarly enrol other members who too have to make a similar contribution. As the chain progresses after successive enrolments, the person who has earlier invested the amount is refunded the same with some return thereon.

The complainant has alleged that the said scheme is a way to cheat the public at large. The counter-affidavit of respondent No. 1 states that during investigation, 18 bank accounts of the accused persons have been frozen to the tune of Rs. 123 crores. It also discloses that as per the statement of Mr. Bhupinder Kumar – one of the accused, the company eBIZ.com Pvt. Ltd. has cheated more than 17,00,000 persons across the country to the tune of more than Rs. 5,000 crores. The counter-affidavit also discloses that accused No. 1, who is the father of the petitioner, transferred Rs. 52 crores into the accounts of the petitioner from his bank account to enable the flight of the ill gotten money.

The submission of Mr. Mittal, learned counsel for the petitioner is that respondent No. 1 has falsely claimed that the petitioner is an accused in the aforesaid case. He submits that the petitioner has been labelled as the promoter of eBIZ.com Pvt. Ltd even though the petitioner was only 13 years of age in the year 2001 when the said company was incorporated. Mr. Mittal submits that the petitioner has absolutely no concern with the said business. On a query, he states that he received Rs. 52 crores from his father out of love and affection.

Mr. Mittal submits that the respondents cannot freeze the petitioner's bank accounts and interfere with the petitioner's right to life and livelihood. Mr. Mittal has also sought to advance submissions to suggest that the business operations of the company eBIZ.com Pvt. Ltd are legal and that the police forces of Delhi and other places have found nothing illegal about its business operations. In these proceedings, we are not concerned with the aspect of illegality, or otherwise, of the business activities of eBIZ.com Pvt. Ltd. since that is an aspect under investigation and examination of the competent court at Hyderabad.

It is within the scope and power of the police officer under Section 102 Cr. P.C to issue prohibitory order in respect of the operation of bank accounts. If during the course of investigation, he finds that such assets (bank accounts) have a direct link with the commission of the offence he is investigating, he would have the power to exercise his discretion to issue directions to prohibit the operation of the account. The investigation of an offence is within the domain of the investigating agency. Petitioner's justification regarding certain entries in the bank account is a fact which would be required to be considered by the Investigating agency. The police would have to determine the extent of monies in the accounts, that is tainted with crime (if any) and we cannot while exercising jurisdiction under Article 226 of the Constitution of India, undertake this exercise.

The scope of enquiry that this Court is called upon to undertake in the present proceedings is only to find out as to whether, or not, there is some basis to direct the freezing of the petitioner's bank accounts by the respondents. No doubt, the petitioner is not named as an accused in the FIR aforesaid, the registration of which has been cited as the reason for freezing of the petitioner's bank accounts. However, it transpires from the counter-affidavit of respondent No. 1 that the petitioner is the recipient of a very large amount of Rs. 52 crores from his father, who is accused No. 1 in the aforesaid FIR and, admittedly, he is a director of eBIZ.com Pvt. Ltd, which is alleged to be running a money circulation scheme/ ponzi scheme. Thus, the transfer of the said amount, and possibly other amounts, into the petitioner's accounts appears to be only a way to fritter away the ill-gotten wealth and proceeds of crime of the accused persons named in the FIR.

Since it cannot be said that there is no basis for freezing of the petitioner's bank accounts by the respondents, we are not inclined to pass any directions as sought by the petitioners. We leave it open to the petitioner to agitate his rights and claims before the Court which is seized of the aforesaid case.

The petition stands disposed of in the aforesaid terms.

The matter need not be listed on 19.11.2019, the date already fixed.

VIPIN SANGHI, J

SANJEEV NARULA, J

SEPTEMBER 05, 2019

N.Khanna