

NSC.

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

CRIMINAL WRIT PETITION NO.5960 OF 2019

Parasnath Baburam Yadav

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. Rajesh Singh i/b Rajesh Singh and Associates, for the Petitioner.

Mr. A. R. Patil, A.P.P for the Respondent No.1 – State.

Ms. Aditi Phatak a/w Mr. Parag Sharma, Mr. Parichehr Zaiwalla and
Ms.Kirti Ojha i/b Udwardia and Company, for the Respondent No.3.

CORAM : REVATI MOHITE DERE, J.

DATE : 23rd OCTOBER, 2020

(THROUGH VIDEO CONFERENCING)

P.C. :

1. Heard learned counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 28th August, 2019, passed by learned Metropolitan Magistrate, 66th Court, Andheri, Mumbai, by which the learned Magistrate was pleased to reject the petitioner's application (Exhibit – 1) filed in C.C. No.423/Misc/2019

seeking directions to the Powai Police Station, Mumbai, to deposit seized bank notes and get specified bank notes exchanged from the Reserve Bank of India, Mumbai, so that the petitioner is able to collect the new currency notes duly exchanged.

3. Learned Counsel for the petitioner submits that the observations made by the learned Metropolitan Magistrate in para 7 of the impugned order dated 28th August, 2019, that there is no document to show that the amount which was seized by the Powai Police Station and returned to the applicant i.e. petitioner herein by order of the court, had serial numbers which were noted by the police authority or by the prosecution, is erroneous and contrary to the material on record. Learned Counsel relied on Exhibit - "O" i.e. page nos.196 to 231 to show that the currency details which were seized by the police were noted by the concerned Officer i.e. Balwant Deshmukh, P.I. Powai Police Station, Mumbai. Learned Counsel also relied on Exhibit – "L" i.e. the no objection given by the Powai Police Station for allowing the application (Exhibit – 1), which is on page 191 of the petition. Learned Counsel also relied on the order dated 22nd June, 2018, passed by the learned Magistrate below Exhibit – 1, thereby allowing the application filed by the petitioner for return of the cash amount of Rs.18 lakhs, seized by the Powai Police Station, Mumbai, on certain terms and

conditions.

4. Learned APP states on instructions that the Police have no objection if the petition is allowed. He states that the police have given the currency details seized by the concerned officer, i.e. Exhibit – “O” of the petition i.e. page nos.196 to 231. He states on instructions that the concerned police station had earlier given its no objection for allowing the application and that the police will abide by the orders of this Court.

5. Learned Counsel for the respondent no.3 - RBI states that there is a Circular dated 12th May, 2017. She states that if appropriate direction is given by the Court in terms of the Circular, they will abide by the same.

6. Perused the papers. On 11th October, 2014, a Ford Fiesta Car was stopped and during the checking of the said vehicle, a suspicious bag was found below the driver's seat containing cash of Rs.18 lakhs. The said cash was seized i.e. 36 bundles of Rs.500/- notes. Accordingly, the police lodged an N.C. complaint on 11th October, 2014, bearing No.3422 of 2014 with the Powai Police Station under Section 171H of the Indian Penal Code. It appears that after obtaining an order from the learned Magistrate

to investigate and file report in connection with C.R. No. 3422 of 2014, the Investigating Officer attached to the Powai Police Station commenced with the investigation and after completion of the same, filed charge-sheet in the said case i.e. C.C. No.4112/PS/2018, in the Court of the learned Metropolitan Magistrate, 66th Court, Andheri, Mumbai. Thereafter, the petitioner filed an application and prayed for return of the cash amount of Rs.18 lakhs, seized by the police in connection with C.R. No. 3422 of 2014, on 11th October, 2014. The trial Court vide order dated 22nd June, 2018, allowed the said application and returned the cash amount of Rs. 18 lakhs to the petitioner on certain conditions i.e. on executing bond and that the concerned police station to prepare the currency numbers for identification in future. Post the said order there was demonetization of the old currency i.e. Rs.500/- notes and hence the petitioner approached the Reserve Bank of India for exchanging the said notes and for handing over the new currency notes. It appears that the Reserve Bank of India on 2nd August, 2018, issued a letter to the trial Court for verifying, whether any order was passed directing the Reserve Bank of India to exchange the specified bank notes. The Government Notification dated 12th May, 2017 was annexed to the letter sent by the Reserve Bank of India to the trial Court. The trial Court in its letter dated 14th August, 2018, informed the Reserve Bank of India that the trial Court had not passed any order directing the bank authorities to

deposit or exchange such specified bank notes. Pursuant thereto, the petitioner filed a Miscellaneous Application being Miscellaneous Application No.423/Misc/2019, on 16th July, 2019 praying therein that necessary direction be given to the Powai Police Station to deposit the seized bank notes and get the specified bank notes exchanged from the Reserve Bank of India, Mumbai, so that the petitioner would be able to collect new currency notes duly exchanged. The said application was not objected to by the police of the Powai Police Station, in its reply dated 16th July, 2019. The learned Magistrate vide order dated 28th August, 2019, rejected the said application. Hence, this petition.

7. As noted above, the learned trial Judge in its impugned order dated 28th August, 2019, has observed that there is no document to show that the amount which was seized by the Powai Police Station and returned to the applicant i.e. petitioner herein by order of the Court, had serial numbers which were noted by the police authority or by the prosecution, is on the face of it erroneous and contrary to the record. Infact, pursuant to the earlier order passed by the trial Court dated 22nd June, 2018, Rs.18 lakhs were handed over to the petitioner – accused on executing a bond. As per the order dated 22nd June, 2018, the concerned officer of the Powai Police Station i.e. Balwant Deshmukh, P.I. has given the currency details of

seized currency, which are at Exhibit – “O”. The said document has been signed by Balwant Deshmukh, P.I. on every page. The petitioner does not dispute the currency details. The police have no objection even today for allowing the aforesaid petition. The seized money, which was released by the trial Court, is in the custody of the petitioner, the details of which are at Exhibit – “O”. The petitioner has already executed a bond, as directed by the learned Magistrate vide order dated 22nd June, 2018.

8. In view of the aforesaid, the petition is allowed in terms of prayer clause (b). The petitioner to hand over the money/currency notes as mentioned in Exhibit – “O” to the Senior P.I, Powai Police Station, Mumbai, who will submit the said money/currency notes, as per Exhibit – “O” to the Reserve Bank of India, so as to enable the Reserve Bank of India to exchange the old currency notes with new currency notes, as per the Government of India circular and hand it over to the Senior P.I, Powai Police Station. The Senior P.I, Powai Police Station, on receipt of the new notes, will handover the same to the petitioner.

9. Petition is accordingly disposed of on the aforesaid terms.

10. All concerned to act on the copy of this order, digitally signed by the Private Secretary of this Court.

REVATI MOHITE DERE, J.