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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1524 OF 2019

1. Sampat Namdeo Ghorpade	
2. Chitra Sampat Ghorpade	
3. Arun Namdev Ghorpade	
4. Vishwas Namdev Ghorpade	
5. Sangita Arun Ghorpade	
6. Punam Pankaj Holkar	...Petitioners
Versus	
The State of Maharashtra	...Respondent

Ms. Shradha Sawant for the Petitioners.

Mr. A.R.Patil, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 23rd JULY, 2021
(Through Video Conferencing)

P.C. :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.
3. By this petition, the petitioners seek quashing and setting aside of the impugned order dated 18th July, 2018 passed by the learned Sessions

Judge, Nashik, by which the petitioner's properties were attached and seeks release of the said properties in favour of the petitioners.

4. Learned Counsel for the petitioners submits that initially only the petitioner No.1 was charged for the offences punishable under the Essential Commodities Act and that later the provisions of the Maharashtra Control of Organised Crime Act, 1999 came to be invoked as against the petitioner Nos.1,3 and 4. She further submits that as the petitioner Nos.1,3 and 4 were absconding, proclamation came to be issued as against them and the petitioner's properties came to be attached under Sections 82 and 83 of the Criminal Procedure Code and under Section 20(3)(c) of the Maharashtra Control of Organised Crime Act, 1999. She submits that the petitioner Nos.1,3 and 4 surrendered pursuant to the Order issuing proclamation and attachment of the petitioner's properties. She submits that later, petitioner Nos.1,3 and 4 were released on bail by this Hon'ble Court (Coram : S.S.Jadhav, J). She submits that as far as petitioner Nos.2,5 and 6 are concerned, they were never chargesheeted nor were they prosecuted in the said case, however, since petitioner Nos.2,5 and 6 are related to the petitioner Nos.1,3 and 4, and as the properties stood in their joint names, the properties of all were attached. Learned Counsel for the petitioners has tendered affidavit-cum-undertakings of Petitioner Nos.1,3

and 4. The said affidavits are taken on record and marked as 'X' (colly).

5. In the said affidavits, the petitioner Nos.1,3 and 4 have undertaken that they will not sell or alienate the said properties, if released, without the prior permission of the Sessions Court or till the disposal of their trial, as this Court may direct. Learned Counsel for the petitioners submits that all the properties are either agricultural lands, houses, petrol pumps, Trucks or two wheelers. She submits that the petitioners are facing tremendous hardships and difficulties, since their primary source of income has been taken away.

6. Learned APP opposes the application.

7. Perused the papers. C.R.No.19 of 2015 came to be registered with the Wadivarhe Police Station, Nashik as against the petitioner Nos.1,3 and 4 on a complaint filed by one, Mr. Manohar Patil. Initially, the offences alleged were under the Essential Commodities Act, as against the petitioner No.1, however, subsequently, the provisions of the Maharashtra Control of Organised Crime Act, 1999 were invoked. It appears that after the provisions of the MCOC Act were applied, the petitioner Nos.1,3 and 4 could not be traced and hence, proclamation was issued as against the

petitioner Nos.1,3 and 4, on an application preferred by the prosecution. Pursuant thereto, the petitioner Nos.1,3 and 4 were declared as proclaimed offenders and the learned Sessions Judge directed attachment of the properties of the said petitioners i.e. petitioner Nos.1,3 and 4 (accused). It appears that as the properties were joint properties, the petitioner Nos. 2,5 and 6's properties also came to be attached though they were not accused in the said C.R. The learned Sessions Judge vide order dated 31st October, 2015, directed attachment of the properties of the petitioners. It appears that after the proclamation order was published, the petitioner Nos.1, 3 and 4 (accused) preferred an Anticipatory Bail Application before the Sessions Court which came to be rejected. Thereafter, the petitioner/accused filed Writ Petitions in this Court for quashing of the FIR, however, the said Writ Petitions were withdrawn.

8. In the interregnum, the properties of the accused persons (petitioner Nos.1,3 and 4) were attached. It appears that on 29th November, 2015, the petitioner Nos.1,3 and 4 surrendered and applied for bail. This Court (Coram: Sadhana S. Jadhav, J) vide order dated 22nd December, 2016 and 21st February, 2018 released the petitioner Nos.1,3 and 4 on bail by separate orders. The said orders have been tendered by the learned Counsel for the petitioners. The same are taken on record.

9. Admittedly, petitioner Nos.2,5 and 6 are not accused in the present C.R., however, their properties also came to be attached as the said properties are held jointly with the petitioner Nos.1,3 and 4 (accused). The application preferred by the petitioners was rejected by the learned Sessions Judge vide order dated 18th July, 2018 on the premise that releasing the properties at this stage would not be just and proper when the matter is subjudice. The petitioner Nos.1,3 and 4 have filed their affidavit-cum-undertakings. In the said affidavit filed by Vishwas Namdeo Ghorpade i.e. petitioner No.4, it is stated that he had surrendered before the learned Sessions Judge after exploring all possible legal options during which time, the investigating authority attached his properties. It is further stated by the petitioner No.4 - Vishwas that he will not sell or alienate the properties belonging to him which are mentioned in Annexure-E and Annexure-F without the prior permission of this Court, or till the disposal of his trial, as this Court may direct. Similar affidavits have also been filed by petitioner No.3 - Arun and petitioner No.1 Sampat. This Court whilst enlarging the petitioner No.3 - Arun on bail has in para 29 has observed as under:

“29. In fact, the papers of investigation would reveal that this is a scam. The first informant, while enquiring into genuineness of the report filed by Jahir Ahmed Shagir Ahmed has learnt that

the applicants herein have indulged into unlawful activities. Except the statements of the witnesses, who are either porters, fair price shop owners, etc. there is no cogent material to throw light on the fact that the applicants have indulged into these activities. The Government authorities were fully aware of these activities for more than 3 years and they could have saved further damage being done, but for the reasons best known to the State, no action was taken. There was no enquiry about public distribution, this Court is of the opinion that the applicants deserve to be enlarged on bail.”

10. The properties which are attached are agricultural lands, houses, vehicles and Petrol pumps. It is urged by the learned Counsel for the petitioners that the petitioners are facing tremendous hardships more particularly, during the pandemic and that their primary right to livelihood is taken away, because of the attachment of the properties. Learned Counsel submitted that the petitioners will not alienate or sell the properties or create third party rights of the properties so attached during the pendency of their case without the permission of the Court. Statement accepted.

11. Learned Counsel also relied on the order passed by this Court in Writ Petition No. 4454 of 2015 dated 19th November, 2015, by which order, this Court released the property of Hindustan Petrol Pump (Vishal Petrol Pump) belonging to petitioner Nos. 5 and 6. The object of attachment of properties is to prevent the accused from absconding, from

dealing with their properties and thereby curtailing their right to enjoyment of their property.

12. In the present case, the petitioner Nos.1,3 and 4 have given affidavit-cum-undertakings that they were not sell or alienate the said properties which have been attached, without the permission of the Trial Court or till the conclusion of the trial, as may be directed by this Court. Similarly, learned Counsel for the other petitioners i.e. petitioner Nos.2,5 and 6 submits that the said petitioners will also not sell or alienate their properties without permission of the Trial Court. Statement accepted.

13. In view of the aforesaid, the petition is allowed and the impugned order dated 18th July, 2018 passed by the learned Sessions Judge, Nashik is quashed and set aside and the properties of the petitioners attached vide order dated 18th July, 2018 be released in favour of the petitioners. The petitioners shall not sell or alienate or create third party rights in the properties so attached, pending the trial or without the permission of the Trial Court.

14. Rule is made absolute in the aforesaid terms and the petition is accordingly disposed of.

15. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.