

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3524 OF 2021

Sanjay Ajitkumar Patel

.....Petitioner

V/s.

The State of Maharashtra

.....Respondent

* * * *

Mr. Aabad Ponda i/by. Mr. Kiran Jain, Advocate for the petitioner.

Mr. A.R. Patil, APP for State.

Coram : Sandeep K. Shinde, J.

Wednesday, 6th October, 2021.

P.C. :

1. This petition challenges conditions at Points No. (8) and (9) in the order of the Sessions Court dated 15th July, 2021 below Exhibit-22 in Sessions Case No. 481/2015 passed by the Additional Sessions Judge at Greater Bombay.

Background facts are as under :

2. Petitioner is elder brother of the deceased, Manoj Ajitkumar Patel, who committed suicide in Flat No.602, C-Wing, Montana Co-operative Housing Society Ltd., Lokhandwala Complex, Andheri (West). After accidental death enquiry, Crime No.68/2015 under Sections 306, 354 and 506 of the Indian Penal Code, was registered at Oshiwara Police Station, against one Tinku Kishor Singh. In the course of investigation, the police seized incriminating material from the aforesaid flat, including its title documents, under panchanama dated 29th February, 2015. Petitioner's case is, his brother, Manoj (deceased) had executed a Will on 18th December, 2015 whereby he bequeathed his interest (in part), in the said flat to him. Whereafter, petitioner, obtained a Probate of the Will from this Court on 11th January, 2019. Thereafter, he moved an application before the Court of Sessions, seeking return of articles, like key of the locker, original title documents of the Flat and prayed that Flat be de-sealed and possession be handed over to him. The learned Sessions Court, although granted the application, imposed conditions, which

according to the petitioner, are onerous. These conditions are :

“8. The Applicant is directed not to create Charge, third party interest or alienate the said flat without prior permission of the Court.

9. He is further directed not to carry out changes in the appearance of scene of offence till conclusion of trial.”

3. Feeling aggrieved by these two conditions, the petitioner has approached this Court in its supervisory jurisdiction.

4. Heard Mr. Ponda, learned Senior Counsel for the petitioner and Mr. Patil, learned Prosecutor for the State.

5. Perused the impugned conditions. It is well settled that power of police officer under Section 102 of the Criminal Procedure Code to seize any property, which may be found under circumstances that create suspicion of

commission of any offence, would not include the power to attach, seize and seal an immovable property and power to seize under Section 102 is limited to movable property as held by the Apex Court in the case of **Nevada Properties Pvt. Ltd. V/s. The State of Maharashtra, 2019 (20) SCC 119**. In the case in hand, the Investigating Officer, as it appears from the panchanama dated 21st February, 2015, besides seizure of title documents, also sealed Flat No.602, C-Wing, Montana Co-operative Housing Society Ltd., Lokhandwala Complex, Andheri (West) which was obviously without power and authority. In the circumstances, since, seizure and sealing of the said Flat itself, had no sanction of law, the conditions impugned (as reproduced above), were equally untenable and required to be quashed and set aside. In the matter of the facts of the case and in view of the law; relating to powers of police under Section 102 of the Criminal Procedure Code in the case of *Nevada Properties* (supra), impugned conditions are quashed and set aside.

6. The petition is allowed in the aforesaid terms and disposed off.

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(Sandeep K. Shinde, J.)