IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.1206 of 2020

Krishna Udupa
S/o.Parameshwara Udupa ... Petitioner

.Vs.

The Deputy Superintendent of Police
Banking Securities Fraud Branch
Central Bureau of Investigation , Bengaluru
(Reg.Cr.No.RC11(E)/2019/CBI/BSFB/BLR ...Respondent

PRAYER :

The Criminal Revision filed under Section 397 and 401 of the Criminal Procedure Code, to call for the records in Crl.M.P.No.2264 of 2020 in Cr.No.RC.11(E)/2019/CBI/BSFB/BLR on the file of learned XI Additional Special Judge for CBI Cases, Chennai and to examine the same and to set aside the order passed in Crl.M.P.No.2264 of 2020 on 31.08.2020.

For Petitioner : Mr.T.Mohan for Mr.G.Gokul

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI Cases

ORDER

(This case has been heard through video conference)

This Criminal Revision has been filed seeking to set aside the order dated 31.08.2020 passed by the learned XI Additional Special Judge for CBI Cases, Chennai in Crl.M.P.No.2264 of 2020 and to defreez the seized FD amount of of Rs.2.38 Crores.

2. The case of the prosecution is that based on the written complaint dated 01.11.2019 preferred by the General Manager, IDBI Bank NPA Management Group, Chennai, on behalf of IDBI Bank Ltd. and 12 other Consortium Members Bank, the Central Bureau of Investigation, Bank Securities Fraud Branch,

Bangalore, registered a case in Crime No.RC.11(E)/ 2019/CBI/BSFB/BLR against one Surana Industries Ltd. and its Directors, unknown public servants and unknown others for offence under Sections 120(b) read with 420, 467, 468 and 471 IPC and 13(2) read with 13(1) (d) of Prevention of Corruption Act 1988. The allegation in the complaint is that during the period 2009 to 2016, the accused in pursuance to the criminal conspiracy, committed offences of cheating and forgery by using forged documents as genuine one and thereby, cheated the bank to the tune of Rs.1083.14 Crores. The petitioner is arrayed as A7 in this case. Further, based on the search warrant dated 04.11.2019 issued by the learned XI Additional Special Judge for CBI Cases, Chennai, a search was conducted in the residential premises of the accused 2 to 9 including the petitioner on 05.11.2019 and incriminating documents, materials and objects were seized and during the search at the residential premises of the petitioner at Bangalore, 4 incriminating documents and 2 material objects were seized. Further, during the search it was found that the petitioner and his wife Mrs.Veena were in joint possession of a locker No.224 at the Punjab National Bank, C.T. Branch, Hudson Circle, Bangalore. Thereafter, the said locker was opened by the petitioner in the presence of the CBI Officials, but nothing was seized. In this case, mahazar proceedings was drawn by the Deputy Superintendent of Police and the same was produced before the XI Additional Special Court for CBI Cases, Chennai. Further investigation revealed that the petitioner was holding the following 22 accounts;

S.No.	Account Number	Nature of A/c	Amount in Rupees
1	128700D200222141	FD	3775000
2	128700D200000150	FD	150000
3	128700D200000202	FD	350000
4	128700D200000336	FD	1112000
5	128700DP00001962	FD	600000
6	128700DP00007285	FD	758657
7	128700DP00007294	FD	896886
8	128700DP00007300	FD	980273
9	128700DP00007692	FD	1073161
10	128700PU00008171	FD	600000
11	128700PU00008180	FD	600000
12	128700PU00008199	FD	600000
13	128700SR00001235	FD	7698631

14	128700SU00000347	FD	750000
15	128700SU00000523	FD	150000
16	128700SU00001023	FD	1100000
17	128700TR00001632	FD	50000
18	128700TR00001854	FD	150000
19	128700TR00002181	FD	150000
20	128700TR00002376	FD	150000
21	128700TR00002455	FD	150000
22	1287000200068343	SB A/c	158671
		Total	22003279

2.1 Further, during the search in the residential premises of the petitioner, it came to light that the daughter and the son of the petitioner were also maintaining accounts with the Punjab National Bank, Jainagar Branch, Bangalore and huge funds were found to be deposited in the form of Fixed Deposits. Therefore, the following accounts belonging to the daughter of the petitioner viz. Aditi Udupa (4 accounts) and the son of the petitioner viz. Anirudh Udupa were seized and frozen under Section 102 Cr.P.C. on 06.11.2019 for the purpose of investigation and that the freezing and seizing of the accounts were duly intimated to the concerned Court on 07.11.2019. However, the pension Account No.0041000300202578 of the petitioner in Punjab National Bank, was not frozen.

Details of the Accounts and Amounts of the Daughter of the petitioner/accused namely Aditi Udupa

S.No.	Account Number	Nature of A/c	Amount in Rupees
1	1287000100987481	SB A/c	2010.92
2	128700PU00002830	FD	1500370
3	128700PU00005156	FD	212465
4	128700PU00012828	FD	85000
	Total		17,99,845.92

Details of the Account and Amounts of the Son of the petitioner/accused namely Anirudh Udupa

S.No.	Account Number	Nature of A/c	Amount in Rupees
1	128700PU00012837	FD	82705

3. Pending investigation, the petitioner had filed a petition under Section 451 read with 457 seeking to defreeze the accounts and permit the petitioner to operate the accounts and to withdraw the funds. However, the trial Court by order dated 31.08.2020 in Crl.M.P.No.2264 of 2020 had dismissed the same. Against which, the present revision has been filed.

4. In the petition, the petitioner had claimed that he had joined the Punjab National Bank in the year 1974 and he took voluntary retirement in the year 1997 after 23 years of service in the bank and thereafter, he has been associated with the Surana Groups in the year 1997 and he was appointed as an Executive Director (Projects) on 29.10.2002 and he was responsible for the implementation of the ongoing and expansion of projects. It is the further case of the petitioner that the monies which were in the accounts are his legal earnings which were out of his savings and from his terminal benefits received by him from his erstwhile employer, the Punjab National Bank and the salaries and the service charges which have been given by the various companies for which the petitioner had given consultancy services after his retirement from the Pubjab National Bank. Claiming that all the amounts are his legal income, the petitioner had filed a petition seeking to defreeze the accounts and permit the petitioner to operate the accounts. However, the lower Court had dismissed the same against which, the revision petition has been filed.

5. When the matter was listed on 03.02.2021, the respondent had filed a detailed counter. It has been stated by the respondent that the investigation in the case was pending and the respondent had entertained some suspicion with regard to the accounts and that they have not confirmed whether the funds which were found in the accounts of the petitioner and his family members were out of his legal income or whether they are proceeds of crime and that since, the investigation is pending, the accounts could not be defreezed. It has been further stated that if only the petitioner appears in person and gives his explanation with regard to the source of funds, a decision could be taken by the respondent. The respondent had also relied on the Judgement of the Hon'ble Supreme Court in Teesta Atul Setalvad vs. State of Gujarat report in 2018 2SCC 372 and submitted that the investigation is pending and till the investigation is completed and the source of funds are

confirmed, the accounts cannot be allowed to be operated.

6. Taking into consideration the submission of the learned Counsel for the petitioner, this Court had directed the petitioner to appear before the respondent and give his explanation with regard to the funds available in his accounts and this Court had also given a protection to the petitioner from any coercive steps taken by the respondent. Accordingly the petitioner had appeared before the respondent and given his explanation.

7. Today a report has been submitted by the respondent. Report is taken on file.

8. Mr.K.Srinivasan, learned Special Public Prosecutor for CBI Cases would reiterate that the investigation is still pending and taking into consideration the number of documents and entries, the respondent has to conduct a detailed investigation to find out the source of income and till date it has not been confirmed whether the funds available in the accounts of the petitioner are out of his legally earned income or whether they are the proceeds of crime. However, he would fairly submit that as far as the amount of Rs.63.04 lakhs is concerned, enquiry confirms that the amounts as claimed by the petitioner are the proceeds which he had received by selling his ITC Shares and Dividends from time to time and that the receipt of the amounts are available in the bank statement of the petitioner bearing A/c. No.0041000200195448 in Punjab National Bank. He would submit that the petitioner has also furnished the supporting letter dated 19.02.2021 issued by Karvy Stock Broking Ltd. and that the respondent also does not have any doubt with regard to the Fixed Deposits maintained by the daughter and son of the petitioner which are supported by documents and in respect of the other amounts, investigation is still going on. He would submit that in view of the orders passed by the Hon'ble Apex Court in Teesta Atul Setalvad vs. State of Gujarat report in (2018) 2SCC 372, till such time investigation is over and the doubts regarding the source of income of the remaining amounts are established and cleared, they cannot be returned to the petitioner at this stage.

9. At this juncture, the learned Counsel for the petitioner would submit that even in the report dated 30.03.2021, the respondent have admitted that an amount of Rs.63.04 lakhs which is available in the petitioner's bank account No.0041000200195448 in Punjab National Bank is out of the sale of the Shares and Dividend and that it is also supported by a letter dated 19.02.2021 given by Karvy Stock Broking Ltd. Further, there is no doubt with regard to the Fixed Deposits standing in the name of the petitioner's daughter and

son and in such circumstances, since the investigation is pending with regard to the other amounts, a direction may be issued to the respondent to release the amount of Rs.63.04 lakhs and the amounts lying in the Fixed Deposits of his daughter and son. The learned Counsel would further submit that the amounts are required for an urgent medical expense of the petitioner's mother who is ill and needs medical treatment immediately. The learned Counsel would further submit that the petitioner is also prepared to execute sufficient bonds for the same and he is also prepared to abide by any stringent condition that may be imposed by this Court.

10. It is relevant to refer to paragraph 15 of the report submitted by the respondent.

> 15.That with regard to the claim of a total amount of Rs.63.04 lakhs from the sale of ITC Shares and Dividends received from time to time on account of the various shares held by the petitioner, it is submitted that the entries for the receipt of amounts are available in the Bank Statement No.0041000200195448 of the petitioner in Punjab National Bank and the letter dated 19.02.2021 of Karvy Stock Broking Ltd.

11. Heard the learned Counsels on either side and perused the materials on record.

12. In Teesta Atul Setalvad vs. State of Gujarat report in 2018 2SCC 372 the Hon'ble Apex Court has held as follows;

> 25. Suffice it to observe that as the investigating officer was in possession of materials pointing out circumstances which create suspicion of the commission of an offence, in particular, the one under investigation and he having exercised powers under Section 102 of the Code, which he could, in law, therefore, could legitimately seize the bank accounts of the appellants after following the procedure prescribed in sub-section (2) and sub-section (3) of the same provision. As aforementioned, the investigating officer after issuing instructions to seize the stated bank accounts of the appellants submitted report to the Magistrate concerned and thus complied with the requirement of sub-section (3).
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> 26. Although both sides have adverted to statement of accounts and vouchers to buttress

their respective submissions, we do not deem it necessary nor think it appropriate to analyse the same while considering the matter on hand which emanates from an application preferred by the appellants to defreeze the stated bank accounts pending investigation of the case. Indisputably, the investigation is still in progress. The appellants will have to explain their position to the investigating agency and after investigation is complete, the matter can proceed further depending on the material gathered during the investigation. The suspicion entertained by the investigating agency as to how the appellants appropriated huge funds, which in fact were meant to be disbursed to the unfortunate victims of 2002 riots will have to be explained by the appellants. Further, once the investigation is complete and police report is submitted to the court concerned, it would be open to the appellants to apply for defreezing of the bank accounts and persuade the court concerned that the said bank accounts are no more necessary for the purpose of investigation, as provided in sub-section (3) of Section 102 of the Code. It will be open to the court concerned to consider that request in accordance with law after hearing the investigating agency, including to impose conditions as may be warranted in the fact situation of the case.

27. In our opinion, such a course would meet the ends of justice. We say so also because the explanation offered by the appellants in respect of the discrepancies in the accounts, pointed out by the respondents, will be a matter of defence of the appellants.

28. We clarify that at an appropriate stage or upon completion of the investigation, if the investigating officer is satisfied with the explanation offered by the appellants and is of the opinion that continuance of the seizure of the stated bank accounts or any one of them is not necessary, he will be well advised to issue instruction in that behalf.

13. In this case, it is the contention of the respondent that the investigation is still going on and the suspicion with regard to the commission of the offence and the source of income

for the money of the petitioner is yet to be cleared. More over, it had been admitted by the respondent that an amount of Rs.63.04 lakhs are from the sale of ITC Shares and Dividends received from time to time on account of various Shares held by the petitioner. Further, it is also submitted that the entries for the receipt of the amounts are available in the bank statement No.0041000200195448 of the petitioner in Punjab National Bank, Hudson Sircle, Bangalore, which is also supported by a letter dated 19.02.2021 of Karvy Stock Broking Ltd. Further, the petitioner has also given explanation in respect of Fixed Deposits belonging to the petitioner's daughter and son which is also been accepted by the respondent and as stated above, the investigation in respect of other amounts are still going on.

14. In view of the above, this Court is of the opinion that the petitioner may be permitted to withdraw the amount of Rs.63.04 lakhs and that the petitioner's daughter and son may be permitted to either withdraw or deal with the accounts/Fixed Deposits in their name.

15. Accordingly, the respondent is directed to instruct the Punjab Nation Bank, Jayanagar Branch, Bangalore, to permit the petitioner to withdraw or deal with the amount upto the value of Rs.63.04 lakhs available in the accounts of the petitioner. Further, the respondent shall also direct the Bank to permit the petitioner's daughter and son to withdraw or deal with their accounts and in the event of the amount of the petitioner's daughter is released, they may be remitted to her Savings Bank A/c. No.1287000100987481. The Fixed Deposit of the petitioner's son bearing No.128700PU00012837 may also be permitted to be operated by the petitioner's son subject to the following condition;

> a. The petitioner shall execute a bond for a sum of Rs.25 lakhs (Rupees Twenty Five Lakhs Only) with one surety for a like sum to the satisfaction of the learned XI Additional Special Judge for CBI Cases, Chennai.

16. At his juncture, the learned Counsel for the petitioner would submit that a direction may be issued to the respondent to complete the investigation with regard to source of funds of the petitioner at the earliest since the funds of the petitioner are unnecessarily frozen. He would also pray that liberty may be given to the petitioner to renew the petition once the investigation in respect of source of income is concluded by the respondent.

17. Accordingly, the respondent shall conclude the

investigation in respect of source of income as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.

18. With the above observations, the revision petition is partly allowed. The petitioner is at liberty to renew the application once the investigation is completed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The XI Additional Special Judge for CBI Cases,
   Chennai

2. The Deputy Superintendent of Police
   Banking Securities Fraud Branch
   Central Bureau of Investigation,
   Bengaluru

3. The Public Prosecutor
   High Court of Madras, Chennai.

+2cc to M/s.G.Gokul, Advocate, S.R.No.21700

Crl.R.C.No.1206 of 2020

GP(CO)
CS/28/07/2021