IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.966 OF 2022

M/S Shri Mahavir Jewelers,
Through its Partner
Mr. Harshal Mahavir Deoda,
Age : 39 years, Occu.: Business,
R/o. : Plot No.3 , Chintamani Colony,
Samarth Nagar, Aurangabad ... Petitioner

Versus

The State of Maharashtra
Through

1. Police Inspector,
Gangapur Police Station,
Tq. Gangapur, Dist. Aurangabad

2. Police Inspector
Economic Offence Wing,
Aurangabad (Rural), Aurangabad,
Dist. Aurangabad.

3. Mr. Krishna Sahebrao Patil Dongaongar,
Age : 46 years, Occu.: Agri.,
R/o. Pratibha Nagar,
Near Sankrutik Mandal, Khadkeshwar,
Aurangabad ... Respondents

....

Mr. Anand P. Bhandari, Advocate for the Petitioner
Mr. R.D. Sanap, , APP for the Respondent Nos.1 and 2/State
Mr. Shyam C. Arora, Advocate for Respondent No.3

....

CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 05 SEPTEMBER 2022

PRONOUNCED ON : 07 OCTOBER 2022

JUDGMENT :-

. Heard finally with consent of both the sides at admission stage.

2. The petitioner by invoking Articles 226 and 227 of the Constitution of India has sought the following substantial relief:

> "(B) By appropriate Writ, order or direction, the impugned order dated 25.06.2022 passed by the learned Additional Sessions Judge, Vaijapur in Criminal Revision Application No.4 of 2022 (Exhibit L) and impugned order dated 30.04.2022 passed by the learned Judicial Magistrate, First Class, Gangapur below Exhibit 16 in Regular Criminal Case No.64 if 2022 (Exhibit J) be quashed and set aside and it be held that the Petitioner is entitled to use Case Credit Account No.38134461152 in State Bank of India , Branch Aurangabad as prayed for in application below Exhibit 16 in Regular Criminal Case No.64 of 2022."

3. It is necessary to have a brief survey on the facts of the petition, which are important and relevant.

4. The petitioner is running his jewelry shop under the name and style as M/s Shri Mahavir Jewelers, Aurangabad. It is a partnership firm. Mr. Paras Amrutlal Mutha has purchased gold from the jewelry shop of the petitioner by making payment by two cheques (Rs. 60,00,000/- and Rs.40,00,000/- , total comes to Rupees 1,00,00,000/-). The petitioner has deposited both the cheques in his bank account with the Vaijapur Merchant Co-operative Bank, Vaijapur, Branch Lasur.

5. Crime No. 402 of 2020 came to be registered with Gangapur Policed Station for the offences punishable under Sections 420, 467, 468, 469, 471, 472, 474, 120-B read with Section 120-B of the Indian Penal Code against the Chairman of Gangapur Sahkari Sakhar Karkhana Limited and 15 others. Mr. Paras Amrutlal Mutha is one of the accused in the said crime. The Investigating Officer of the said crime, without following the due procedure of law, was pleased to freeze the current Bank account of the petitioner operated with State Bank of India, Aurangabad, Branch Kranti Chowk. He, therefore, filed an application before the Judicial Magistrate, First Class to de-freeze the account of the petitioner. The same came to be rejected. The petitioner,

therefore, filed Criminal Revision Application before the Sessions Court at Vaijapur. The learned Additional Sessions Judge, Vaijapur was pleased to observe that the Investigating Officer has freezed the Bank account without adhering to the mandatory provisions of Section 102 of the Code of Criminal Procedure Code, and set aside the order. The liberty was granted to the Investigating Officer to freeze the said account after following due process, if there is need. Once again, the Investigating Officer seized that account. The petitioner again filed criminal revision application in view of liberty granted by the Additional Sessions Judge, Vaijapur. The Petitioner has challenged the said action by filing criminal Writ Petition NO. 983 of 2021. The said criminal writ petition came to be disposed of by this Court vide order dated 06.12.2021 by observing that the petitioner would be at liberty to file an application for de-freezing his account after filing of the charge-sheet.

6. After completion of the investigation, charge-sheet came to be filed vide RCC No.64 of 2022. In view of liberty granted by this Court, the petitioner filed an application in the said proceedings for de-freezing the amount of the petitioner. However, the learned Judicial Magistrate, First

Class was pleased to invest that amount of Rs.1,00,00,000/- in the fixed deposit instead of releasing the same. The Criminal Revision Application preferred by the petitioner also came to be dismissed.

7. In the above background, the petitioner is before this Court.

8. Heard Mr. Anand Bhandari, learned counsel for the petitioner, Mr. R.D. Sanap, learned APP for respondent Nos. 2 and 3, and Mr. Shyam Arora, learned counsel for respondent No.3.

9. Mr. Bhandari, learned counsel for the petitioner vehemently submitted that Mr. Paras Mutha has purchased gold from the jewelry shop of the petitioner worth of Rs.1,00,00,000/-. Even though there are allegations against him in the F.I.R., he is not chargesheeted. In fact, the petitioner has sold the gold of Rs.1,00,00,000/- to Mr. Paras Mutha by following the procedure. The receipts have been issued. The investigation has been carried out, and involvement of this petitioner or Mr. Paras Mutha is not revealed. Unnecessarily the amount of Rs.1,00,00,000/- has been freezed. His working capital is freezed. The provision of

Section 102 of the Criminal Procedure Code was not followed. He submitted that the entire transaction is duly reflected in the account. The petitioner is a businessman. He is ready to give appropriate undertaking. If the amount is blocked, the petitioner would face financial crises for want of working capital. For more than 19 months, the amount is blocked. He, therefore, urged to quash and set aside the orders passed by both the courts below, and prayed to release the amount of Rs.1,00,00,000/-

10. Mr. Bhandari, learned counsel for the petitioner has placed his reliance on the following two citations.

(i) **Manish Khandelwal and others Vs. State of Maharashtra** reported in ***2019(5) Mh.L.J. 789***.

(ii) ***Vilas Prabhakar Dange Vs. State of Maharashtra*** [Criminal Writ Petition No. 1033 of 2017 decided on 07.12.2017 by this Court (Nagpur Bench)].

11. Mr. Sanap, learned APP for respondent Nos.1 and 2/State opposed to release the amount. He submitted that though the role of Mr. Paras Mutha is not revealed during the course of investigation, the entire transaction of

Rs. 1,00,00,000/- is very much suspicious. The first informant has filed an application before the Court for re-investigation in the case. It is under consideration. If nothing reveals in the re-investigation, the petitioner may make fresh prayer. As of today, there is no need to release the amount.

12. Mr. Shyam Arora, learned counsel for respondent No.3 also argued on similar lines. He submitted that respondent No.3/first informant has levelled specific allegations against Mr. Paras Mutha, and his role in the financial scam of Gangapur Sahkari Sakhar Karkhana Limited. He submitted that though the Investigating Officer has filed a closer report against several accused persons, out of which, Mr. Paras Mutha is one of them, the first informant has filed an application for further investigation in the case, and his application is under consideration. He, therefore, opposed to release the amount.

13. I have considered the submissions of learned counsel for the petitioner, learned APP for the State and the learned counsel for respondent No.3/first informant.

14. The question raised in the petitioner is regarding release of Rs.1,00,00,000/-, which is presently invested in the fixed deposit with the State Bank of India, Kranti Chowk Branch at Aurangabad. It is true that the Police Inspector, Economic Offence Wing has freezed the bank account of the petitioner without complying the provisions of Section 102 of the Criminal Procedure Code. As per the order passed by the Additional Sessions Judge, Vaijapur, the action of freezing the Bank account of the petitioner was set aside and his Bank account was de-freezed, however, by giving liberty to the Investigating Officer to freeze the same by following procedure of Section 102 of the Code of Criminal procedure. After complying the provisions of Section 102 of the Code of Criminal Procedure, the Investigating Officer has again freezed the account of the present petitioner.

15. In case of ***Manish Khandelwal and others Vs. State of Maharashtra*** (supra), this court at Principal Seat, after taking into consideration the provisions of Section 102 of the Code of Criminal Procedure, and the Division Bench decision and other citations, was pleased to de-freeze the account for non-compliance of mandatory provisions of Section 102 (3)

of the Code of Criminal Procedure by the Investigating Officer by setting aide the order passed by the Additional Sessions Judge.

16. This Court, Bench at Nagpur in Criminal Writ Petition NO.1033 of 2017 (Vilas Prabhakar Dange Vs. State of Maharashtra) was also pleased to quash and set aside the order passed by the Judicial Magistrate, First Class, and de-freezed the Bank account of the petitioner for non-compliance of Section 102 of the Code of Criminal Procedure.

17. As pointed earlier, in the present case, in view of liberty granted by the Additional Sessions Judge Vaijapur, the Investigating Officer, after complying the provisions of Section 102 of the Code of Criminal Procedure, has again freezed the Bank account of the petitioner. Now, the amount is invested in the fixed deposit in the State Bank of India, Kranti Chowk Branch, Aurangabad. In view of this factual scenario, the above said two decisions are not anyway helpful to the petitioner, when the Investigation Officer after rectifying the procedural lacuna, has seized the Bank

account after complying the provisions of Section 102 of the Code of Criminal Procedure.

18. Now, coming to main relief. It is true that the investigation of Crime No.402 of 2020 registered at Gangapur Police Station has been completed and the Investigating Officer has filed the charge-sheet. Admittedly, the name of Mr. Paras Amrutlal Mutha is not arrayed as an accused, and on this main ground, the petitioner is seeking release of his amount.

19. It appears that Mr. Paras Amrutlal Mutha has purchased gold coins worth of Rs.1,00,00,000/- from the petitioner jewelry firm, and payment is made by two cheques. The cheques were encashed and the amount is credited in the Bank account of the petitioner in Vaijapur Merchant Cooperative Bank, Vaijapur Branch Lasur Station. The receipt of the same is also placed on record by the petitioner regarding the transaction. Mr. Bhandari, learned counsel for the petitioner has also placed on record the copies of ledger account. It was attempted to show how the transaction was genuine. It may not be proper to make any comment regarding said transaction of Rs.1,00,00,000/-, which had

taken place between the petitioner and Mr. Paras Amrutlal Mutha. Even though the closer report is submitted by the Investigating Officer, respondent No.3/first informant has given an application before the concerned Court and sought re-investigation in the matter regarding financial scam of the Gangapur Sahkari Sakhar Karkhana Limited. The application for re-investigation is under consideration before the concerned Court. Let the concerned Court may decide the said application. It would not be just and proper to release the amount of Rs.1,00,00,000/-, when the prayer for re-investigation in respect of role of Mr. Paras Amrutlal Mutha is under consideration before the concerned Court. It would be too early to make any comment about the role of Mr. Paras Amrutlal Mutha and his transaction of Rs.1,00,00,000/-, whereby he has purchased gold coins from the jewelry shop of the petitioner.

20. The amount of Rs.1,00,00,000/- is now safe. It is invested in the fixed deposit account with the State Bank of India, Branch Kranti Chowk, Aurangabad. If nothing is revealed in the re-investigation, the petitioner would get back said amount of Rs.1,00,00,000/- with interest thereon.

20. Having regard to the above reasons and discussion, and considering over all facts of the petition, it would not proper to release the amount at this stage.

21. In the result, the following order is passed.

<u>O R D E R</u>

(i) The Criminal Writ Petition stands disposed of by giving liberty to the petitioner to file a fresh petition after decision of re-investigation by the concerned Court in the matter.

(ii) With the above observations criminal writ petition stands disposed of .

(iv) No order as to costs.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane