IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1386 OF 2020

Swati w/o Rajabhau Phad
Age: 35 years, Occ.: Household,
R/o. Flat No.72, 7th Floor, 15/A,
Sagar Tarang, Worli,
Sea-face, Mumbai-30. **.. Petitioner**

Versus

1. The State of Maharashtra
(Through Gangakhed Police Station,
Dist. Parbhani.)

2. The Superintendent of Police,
C.I.D., Aurangabad.

3. Deputy Superintendent of Police,
C.I.D. Aurangabad. **.. Respondents**

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Mr. N. S. Ghanekar, Advocate for petitioner.
Mr. D. R. Kale, PP for respondents - State.

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CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.

DATE : 25-11-2022

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. By invoking the powers of this Court under Article 226 and 227 of the Constitution of India, the petitioner has sought directions against the respondents to withdraw the bar upon the petitioner to sell and purchase the property to carry out financial transaction which was in fact imposed on the basis of letter dated 24.07.2018 to the Deputy Inspector General of Registration and Controller of

Stamps, Latur.

2. Heard learned Advocate Mr. N. S. Ghanekar for the petitioner and learned Public Prosecutor Mr. D. R. Kale for the respondents - State.

3. The petitioner is the daughter of one Ratnakar Manikrao Gutte, who is accused No.5 in R.C.C. No.68 of 2019 and the said matter is pending before learned Judicial Magistrate First Class, Gangakhed, Dist. Parbhani. The said case was investigated on the basis of FIR vide Crime No.293 of 2017 by C.I.D., Aurangabad and the charge-sheet has been filed for the offences punishable under Sections 417, 420, 467, 468, 471, 120-B read with Section 34 of Indian Penal Code (for short "IPC"). It is alleged that accused No.5 Ratnakar Gutte had taken crop loan in the name of various agriculturists and committed misappropriation of amount of Rs.349 Crore 96 Lakhs. The petitioner is not an accused in that case, however, Superintendent of Police, C.I.D., Aurangabad had communicated the Deputy Inspector General of Registration and Controller of Stamps, Latur by letter dated 24.07.2018 to prohibit the family members of Ratnakar Gutte from selling and purchasing property and also to carry out other financial transactions. Ratnakar Gutte had filed application to the concerned authority for lifting of ban, however, it was turned down on 24.08.2020.

4. It has been vehemently submitted on behalf of the petitioner that perusal of the charge-sheet would show that there is absolutely no reference of the name of the petitioner as well as that there was any kind of financial transaction which had direct connection with the misappropriated amount. Under such circumstance, the ban imposed against her deserves to be lifted.

5. Learned Public Prosecutor Mr. D. R. Kale for the respondents - State has strongly objected the petition and submitted that the fraud is of huge amount. Those agriculturists, who were the members of the sugar factory of which Ratnakar Gutte was the Chairman, had suffered a lot. False documents were prepared in order to get the crop loan in the name of those agriculturists. The petitioner is the daughter of said Ratnakar Gutte. The affidavit-in-reply on behalf of respondent No.3 Smt. Manisha Ashish Kulkarni, who is serving as Deputy Superintendent of Police, (C.I.D.) Aurangabad, would show that the properties of the accused persons were required to be attached as per the provisions of Section 105-E of the Code of Criminal Procedure. In fact, the petitioner ought to have approached the concerned Court for any order in respect of the said attachment. Even this Court in other petitions had taken note of huge amount of fraud and had given directions. Under such circumstance, the petitioner cannot seek lifting of the said ban.

6. At the outset, it is to be noted that the fact, which is not in dispute is required to be considered and the said fact is that the petitioner is not arrayed as accused in R.C.C. No.68 of 2019. It is also an admitted position that only a letter has been given on 24.07.2018 by the Additional Superintendent of Police, C.I.D. Aurangabad to the Deputy Collector, who is also the authority under the Stamp Act. The said letter states that if any transaction of the family members of Ratnakar Gutte and also that of Ratnakar Gutte is to be transferred or purchased i.e. sell as well as purchase, then it should not be registered. Now, by way of the affidavit-in-reply, it has been stated that it is the order that is passed under Section 105-E of the Code of Criminal Procedure. For that purpose, we will have to consider the said provision. Section 105-E of the Code of Criminal Procedure reads thus :-

> "**105E. Seizure or attachment of property.—** (1) Where any officer conducting an inquiry or investigation under section 105D has a reason to believe that any property in relation to which such inquiry or investigation is being conducted is likely to be concealed transferred or dealt with in any manner which will result in disposal of such property, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order of attachment directing that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer

> making such order, and a copy of such order shall be served on the person concerned.
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> (2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the said Court, within a period of thirty days of its being made."

Thus, it is to be noted that there has to be an inquiry or investigation under Section 105-D of the Code of Criminal Procedure and for that purpose after such inquiry or investigation is conducted by an officer, then he has to make an order for seizing such property and where it is not practicable to seize, then he may make an order of attachment. If the impugned letter is to be taken as attachment, then it cannot be said that it is passed in view of Section 105-E(1) of the Code of Criminal Procedure. There has to be a proper order to that effect. Further, even if for the sake of arguments we accept that the said letter can be taken as order under Section 105-E(1) of the Code of Criminal Procedure, then there has to be a compliance under Section 105-E(2) of the Code of Criminal Procedure, which requires that such order will not come into effect unless the said order is confirmed by an order of the Court within a period of 30 days of its being made. Here, along with the affidavit-in-reply, there is no such order placed on record which had confirmed the said order/letter dated 24.07.2018 from a competent Court within a period of 30 days. Under such circumstance, when there is absolutely no compliance of a statutory requirement, then such ban/restrictions cannot go for indefinite period.

7. One more fact that is required to be considered is that the petitioner is not an accused in the said case. Merely because she is the daughter of original accused No.5, that does not *per se* allow the concerned officer to ban her financial transactions. There is nothing placed on record along with the charge-sheet to show that the present petitioner had received a part of fraudulent amount or from the said fraudulent amount anything has been purchased in her name. Under such circumstance, the petitioner is also not required to go before the concerned Court where the case is pending. We are satisfied of the fact that in view of non adherence of the statutory requirement, the fundamental rights of the petitioner are violated and, therefore, they are required to be interfered with by this Court in exercise of constitutional powers under Article 226 and 227 of the Constitution of India.

8. Hence, the writ petition stands allowed in terms of prayer clause 'B'.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm