

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1036 OF 2021

Kiran Laxman Aher

... **PETITIONER**

VERSUS

The State of Maharashtra & ors.

... **RESPONDENTS**

.....
Shri S.S. Jadhavar, Advocate for petitioner
Shri R.B. Bagul, A.P.P. for respondent No.1.
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CORAM : R. G. AVACHAT, J.

Date of reserving order : 11th March, 2022

Date of pronouncing order : 16th March, 2022

ORDER :

The challenge in this petition is to the order dated 18/1/2021, passed by Judicial Magistrate, First Class, Court No.2, Parner on Criminal Misc. Application No.196/2020 and the order dated 18/6/2021 passed by Sessions Judge, Ahmednagar in Criminal Revision No.9/2021. Vide the orders impugned herein, the prayer of the petitioner for release of a sum of Rs.5 Crores in his favour has been turned down.

2. The petitioner is a Secretary of Matoshri Shaikshanik Pratishthan, village Ane, Taluka Junnar, District

Pune. It is an educational institution. It was in search of a land for establishment of hospital in Pune. In January 2020, one property agent – Bhuvneshkumar came in contact with the petitioner. A land at Wagholi was identified. The petitioner agreed to purchase the same for 5 Crores rupees. The petitioner obtained a Demand Draft of Rs.5 Crores. A scanned copy thereof was forwarded by him to one Ajaysingh, a Chandigarh based Advocate. The draft was drawn in favour of Hanumant Alwar Daviar Sthal Trust, Bijnor. The draft was obtained on Account No.31261808157 with State Bank of India, Takli Dhokeshwar Branch on 11/2/2020. No steps, however, were taken to complete the transaction. The petitioner, therefore, informed Advocate Ajaysingh (accused No.2) that the Demand Draft would be cancelled. The petitioner, therefore, sent his son Vijay to his banker on 22/4/2020 for cancellation of the Demand Draft. It was, however, learnt that the Demand Draft had already been encashed. The petitioner was required to run from pillar to post. He was also required to approach the higher police authorities and file petition in the High Court for initiation of criminal proceedings against those who encashed the Demand Draft. Ultimately, crime vide C.R. No.0618/2020 came to be registered at Parner Police Station for offences punishable

under Sections 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code. During the investigation, it was realised that the amount covered by the Demand Draft was credited in the Bank Account of the Hanumant Alwar Daviar Sthal Trust, Bijnor in its I.D.B.I. Bank, Bijnor. The said Account was being operated by (1) Ashok Bhopalsing Chaudhary and (2) Jimi Ashok Chaudhary (accused).

3. The investigating officer has freezed the said Account No.31261808157 with a sum of Rs.5 Crores therein. The said amount is prayed to be released in favour of the petitioner.

4. The learned Magistrate rejected the application on the ground that the original Demand Draft is still in custody of the petitioner. It is still a valid bill of exchange obtained by the petitioner from his banker – State Bank of India for valid consideration. A scanned copy of the said Demand Draft (forged) came to be encashed. According to the learned Magistrate, the petitioner can very well present the Demand Draft with the concerned Bank for encashment.

5. The learned Sessions Judge upheld the said order on the very grounds on which the learned Judicial Magistrate, First Class had rejected the same.

6. Learned counsel for the petitioner would submit that, the State Bank of India, Takli Dhokeshar Branch has refused to pay him the amount under the original Demand Draft. The said Demand Draft is very much in his possession. The accused involved in the crime had forged the Demand Draft and encashed the same. A Bank official dealing with such transaction might have been hand in gloves with the accused identified in the case. According to learned counsel, the petitioner is being harassed for no reason.

The learned A.P.P. supports the impugned order.

7. Admittedly, the petitioner is a Secretary of Matoshri Shikshan Pratishtan. It was in search of land for establishment of hospital in Pune. The land was, therefore, identified at Wagholi. The petitioner had negotiations in this regard with the persons residing out of the State of Maharashtra. The deal was about to be struck for Rs.5 Crores. The petitioner, therefore, purchased a Demand Draft of Rs.5 Crores from State Bank of India, Takli Dhokeshwar Branch. He even transmitted scanned copy of the Demand Draft to the other side. When the deal could not be materialised, he approached the State Bank of India for cancellation of the Demand Draft and to realise the amount

under the draft to have been encashed. The Bank officials refused to pay the petitioner amount under the draft. He then realised something amiss. He had, therefore, to approach the high ranking police officials and the High Court as well for registration of crime and investigation thereof. It was found during investigation that the amount under the draft (forged) was credited in the I.D.B.I. Bank, Branch Bijnor. The said Account was being operated by Ashok Chaudhary and Gimi Chaudhary.

8. True, both the courts below were right in observing that since the original draft has still been in possession of the petitioner, he can very well get it cancelled and have the amount thereunder back to him. It, however, appears that, both the courts below did not take into consideration the fact that the State Bank of India, Branch Takli Dhokeshwar refused to pay the money/ cancel the draft. Admittedly, the amount under the draft has been freezed in the I.D.B.I. Bank, Branch Bijnor. It is not a question of identification of currency notes during trial of the case. The bank in fact ought to have cancelled the original Demand Draft and paid the petitioner amount thereunder. Be that as it may. The amount in freezed Bank Account belongs to the State Bank of India, Branch Takli Dhokeshwar. It owes the

said amount to the petitioner under the Demand draft sought to be cancelled. No useful purpose would be served by keeping the amount freezed. It has to revert back to the State Bank of India and ultimately be paid to the petitioner herein. Instead of following such procedure, it would therefore, be desirable to allow the application Exh.1 in Criminal M.A. No.196/2020 in terms of the following order:

ORDER

(i) The Criminal Writ Petition is allowed in terms of prayer clause (B).

(ii) On receipt of the sum of Rs.5 Crores, the petitioner shall immediately submit the original Demand Draft to the State Bank of India, Branch Takli Dhokeshwar, if not already submitted.

**(R. G. AVACHAT)
JUDGE**

fmp/-