

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 756 OF 2022

Amol Jagdish Patole ...Petitioner
Versus
Amit Kumar S/o Virendra Prakash And Anr. ...Respondents

**WITH
CRIMINAL WRIT PETITION NO. 757 OF 2022**

Amol Jagdish Patole ...Petitioner
Versus
Saumaiyya Amit Kumar Sharma
@ Sumaiyya Ejaj Pirjade And Anr. ...Respondents

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Mr. Satyajeet P. Dighe, Advocate for the Petitioner in both Petition.

Mr. S. R. Agarkar, APP for the Respondent – State.

Mr. Ashraf Patel, Advocate for Respondent No.1 in both Writ Petitions.

Mr. Ingale Sagar Gangaram (API) Upnagar Police Station, Nashik City,
Present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 10th AUGUST, 2022.

PER COURT:

1. The petitioner in both these petitions is the original complainant in C.R. No.18 of 2020 registered with Upnagar Police Station pursuant to directions issued under Section 156(3) of Cr.PC. for offences punishable under Sections 406, 418, 419, 420, 465, 468, 469, 471, 120-B, r/w Section 34 of Indian Penal Code (for short “IPC”), the First Information Report (for short ‘FIR’) was

registered against Sobiya Amol Patole @ Sobiya Ejaj Pirjade, Hamida Ejaj Pirjade, Ehtesham Ejaj Pirjade, Mohammad Mobin Mohammad Sabir, Nadim Mohammad Sabir and Ejaj Shafi Pirjade. Investigation has proceeded. On completing investigation, charge-sheet was filed.

2. The petitioner is aggrieved by order dated 10th January, 2022 passed by the learned Additional Sessions Judge, Court No.11, Nashik in Criminal Revision Application No.175 of 2021.

3. The petitioner had preferred M.A. No.127 of 2021 in R.C.C. No.136 of 2021 which was allowed and it was held that the petitioner is entitled to provisional custody of the amount deposited in the various banks in the nature of fixed deposit as mentioned in Paragraph – 3 of the application. The petitioner was directed to issue indemnity bond for the amount of fixed deposit shown in Paragraph – 3 of the application is for Rs.1,14,40,000/-. Several other conditions were also imposed while allowing the said application.

4. The respondent No.1 in Criminal Writ Petition No.756 of 2022 and the respondent No.1 in Criminal Writ Petition No.757 of 2022 challenged the order dated 29th November, 2021 before the Court of Sessions. The learned Sessions Judge vide order dated

10th January, 2022 set aside the order dated 29th November, 2021 passed in Criminal M.A. No.127 of 2021 and the matter was remanded back to the trial Court to decide a fresh by giving due opportunity of hearing to the petitioner and pass necessary orders. Learned Advocate for the petitioner submitted that the respondent No.1 in Criminal Writ Petition No.756 of 2022 has no locus to prefer revision application before the Sessions Court and he has no right of ordinance. The learned Sessions Judge ought not have remanded the matter back to the Magistrate with direction to give opportunity of hearing to him. He was added as joint account holder subsequently. On the date of registration of FIR he was not joint account holder. He had approached the Sessions Court after the learned Magistrate had passed an order allowing the application preferred by the petitioner. It is further submitted that the respondent No.1 in Criminal Writ Petition No.757 of 2022 is the accused in this case. The order passed by the lower Court indicate that notice was issued to her and therefore, no grievance could have been made that the order passed by the learned Magistrate without giving opportunity of hearing. Amount of Rs.30,00,000/- was withdrawn from the account, although, the order of freezing the account was in operation and it is not clear as to how the amount was withdrawn.

5. Learned APP submitted that the order passed by learned Sessions Judge deserves to be confirmed. The learned Sessions Judge has remanded the matter back to the trial Court. The contentious issues raised by both the parties are required to be decided by the learned Magistrate a fresh. Requisite procedure was followed for freezing of account under Section 102 of the Code of Criminal Procedure.

6. Learned Advocate for the respondent No.1 in both the petitions submits that, both the respondents have locus to oppose the application for return of property. They were not heard. The learned Sessions Judge has directed the trial Court to hear the matter a fresh and no prejudice would be caused to either party. The respondent in both these petitions to demonstrate before the learned Magistrate about their right/locus to oppose the prayer for return of property made by the petitioner.

7. I have perused the order passed by the learned Magistrate as well as learned Sessions Judge. The order dated 10th January, 2022 indicate that, considering the contentions of both the sides, it would be appropriate to give opportunity of hearing to the respondent No.1 and the learned Magistrate is directed to decide it the application for return of property a fresh by giving due

opportunity of hearing to the petitioner and respondent No.1 in both the revision applications.

8. Considering the issues involved in this petition, I do not find any infirmity in the order of Sessions Court. Without giving any findings about the merits of the case by keeping all the issues open, the learned Magistrate is directed to comply the order of the sessions Court as expeditiously as possible.

9. Both the parties are directed to appear before the learned Magistrate on 22nd August, 2022 at 11.00 am.

10. It is clarified that this Court has not adjudicated the issues on the merits of the case. Writ petition stands disposed of accordingly.

11. The learned Magistrate shall consider all the issues raised by either party.

12. The application shall be decided within six weeks from 22nd August, 2022.

(PRAKASH D. NAIK, J.)