

Vina Khadpe

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2527 OF 2022

NASIBULLAH SAMIULLAH ... Petitioner
KHAN

Versus

STATE OF MAHARASHTRA
AND ORS ... Respondents

Mr. Mahesh Vaswani a/w Ms. Shreya Tiwari,
Advocates i/b. **Ms. Dharini Nagda,** Advocate for
the Petitioner.

Ms. M.M. Deshmukh, APP for the Respondent-
State.

Mr. Mandar Lalsare, Advocate for Respondent
No.5.

CORAM: M. S. SONAK &
N.R. BORKAR, JJ.
DATED: 14th September 2022

P.C.:

1. Heard Mr. Mahesh Vaswani, learned Advocate for the Petitioner, Mr. Mandar Lalsare, learned Advocate for Respondent No.5 and Ms. M.M. Deshmukh, learned Public Prosecutor for the Respondent – State.

2. On 12th September, 2022, we made the following order which reads thus:

“1. Heard learned Counsel for the parties.

2. One of the allegations in this Petition concerns non compliance with the order dated 7th April, 2022 made by the Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai. The operative portion of this order reads as follows:

“ORDER

1] The Investigating Officer, Cuffe Parade Police Station in Crime No.52/2019 is hereby directed to release the amount of Rs.81,79,010/- of the applicant / witness in his account from the freezed account by de-freezing the entire account without earmarking any amount.

2] The details of the freezed account of the applicant / witness is mentioned in the FIR for reverting this amount in the said account.

3] The applicant shall furnish indemnity bond of Rs.81,79,010/- with a condition to place the said amount before the Court whenever called during course of trial.

4] The application is disposed off accordingly.

Sd/-

(A. V. Kulkarni)

Metropolitan Magistrate,

Date-07.04.2022 23rd Court, Esplanade, Mumbai”

3. The learned Public Prosecutor states that this order has been complied with. In support, she hands in communication dated 24th May, 2022 addressed by Kunal Rupwate, Assistant Police Inspector, Cuffe Parade Police Station, Mumbai addressed to the Branch Manager, Kotak Mahindra Bank. The operative portion of the above letter reads as follows:

“AND WHEREAS, during investigation of the said case the account of Metallo and Engineering Equipment Pvt. Ltd and Raj Enterprises came to be freezed as per the direction of this office vide letter mentioned above and the amount freezed is Rs.81,79,010 in the A/c no. 4411855891 and 6911592764 of Metallo and Engineering Equipment Pvt. Ltd. Enterprises and the rest of account be permitted to be operated by account holder as per orders.”

4. In our opinion, the aforesaid letter does not, prima facie, amount to compliance to the directions issued in the order dated 7th April, 2022. The order requires release of amount of Rs.81,79,010/- and defreezing of the entire account without

earmarking any amount. The above letter, prima facie continues with the freezing order to the extent of Rs.81,79,010/-.

5. Learned Public Prosecutor, based on instructions from Mr.Rupwate, states that necessary corrective orders will be made immediately. The statement is accepted.

6. We post this matter for further consideration on 14th September, 2022.

7. In the meanwhile, learned Counsel for the Bank also tenders reply on behalf of the Bank.

8. Stand over to 14th September, 2022. Place this matter 'High on Board' for "directions" / "disposal".

3. Today, learned APP tenders communication dated 12th September, 2022 addressed by the Senior Police Inspector, Cuffe Parade Police Station, Mumbai to the Branch Manager, Kotak Mahindra Bank, Mumbai. The operative part of the said communication requires the Branch Manager to de-freeze the entire account without earmarking any amount and permitting the account holder to operate the said account.

4. In our opinion, with issuance of the aforesaid communication dated 12th September, 2022, the Metropolitan Magistrate's order dated 7th April, 2022 stands complied. This position is also accepted by the learned counsel for the Petitioner.

5. Learned counsel for the Petitioner further submits that the Petitioner has now made a complaint to the Commissioner of Police, Mumbai and a direction may be issued for disposal of the same. If such complaint is indeed made, we request the Commissioner of Police, Mumbai to dispose of the complaint in accord with law without in any manner being influenced by the

order that we have today made or the orders that we have made earlier.

6. With the aforesaid directions, this Writ Petition is disposed of. There should be no order as to costs.

7. All concerned to act on the authenticated copy of this order.

(N.R. BORKAR, J)

(M. S. SONAK, J)