

AGK

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

**WRIT PETITION NO.1976 OF 2022**

Radinik Technologies Pvt. Ltd. & Anr. ... Petitioners

**V/s.**

The State of Maharashtra ... Respondent

**WITH**

**INTERIM APPLICATION NO.2936 OF 2022**

**IN**

**WRIT PETITION NO.1976 OF 2022**

Prasanna Deshmukh ... Applicant

**V/s.**

The State of Maharashtra ... Respondent

**WITH**

**WRIT PETITION NO.1975 OF 2022**

Mahesh Sakhalkar & Anr. ... Petitioners

**V/s.**

The State of Maharashtra ... Respondent

**WITH**

**INTERIM APPLICATION NO.2935 OF 2022**

**IN**

**WRIT PETITION NO.1975 OF 2022**

Prasanna Deshmukh ... Applicant

**V/s.**

The State of Maharashtra ... Respondents

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Mr. Bhushan Mahadik with Mr. Shashank Wadke i/by  
Mahadik & Associates for the petitioners.

Mr. Siddharth Jagushte for intervenor in both IAs.

Mr. A.R. Patil, APP for the State.

**CORAM : AMIT BORKAR, J.**

**DATED : OCTOBER 11, 2022**

**P.C.:**

**1.** The challenge in these writ petitions is to the order dated 20<sup>th</sup> May 2022 passed by the 3rd Judicial Magistrate First Class, Satara in Criminal Miscellaneous Application No.362 of 2020. The application was filed by the petitioner for defreezing bank accounts which came to be freezed in C.R. No.1067 of 2021. The learned Magistrate after considering the reply filed by the investigating agency rejected the application holding that it would be open for the petitioner to file an application for defreezing of account once the investigation is complete and final report is submitted.

**2.** On perusal of paragraph 10 of the impugned order, it appears that the learned Magistrate has not considered the application of the petitioner on merits. Only factor which appears to have been weighed with the learned Magistrate is that the learned APP opposed for grant of application as it will hamper the investigation.

**3.** While considering the application for defreezing of account, it was obligatory on the Magistrate to consider the ingredients of

section 102 of the Criminal Procedure Code. The Magistrate needs to adjudicate as to whether the property seized is proceeds of crime, or not. In the absence of such inquiry being held by the learned Magistrate, it was not proper on the part of the Magistrate to reject the application mainly on the ground that the learned APP opposed the application. The right of the accused to apply after completion of investigation is an independent right but when an application under section 102 is filed and when a *prima facie* case is made out that the property seized is no way connected with the crime alleged, then the learned Magistrate ought to have held an inquiry to that effect.

**4.** The investigating agency has filed detail affidavit before this Court. The affidavit is sworn by Mr. Bajirao Jagannath Dhekale, Assistant Police Inspector attached to the Economic Offence Wing, Satara. A copy of said affidavit shall be placed before the learned Magistrate. The learned Magistrate shall reconsider the application of the petitioner for defreezing the account after giving opportunity of hearing to the petitioner and the learned APP after taking into consideration affidavit filed before this Court and shall decide the application within a period of two (2) weeks from the date of appearance of the parties.

**5.** The parties shall appear before the learned Magistrate on 17<sup>th</sup> October 2022.

**6.** It is open for the investigating agency to file additional affidavit before the learned Magistrate which shall be considered by the learned Magistrate in accordance with law.

**7.** The writ petitions stand disposed of in above terms. No costs.

**8.** In this view of the matter, both the interim applications are infructuous and are disposed of accordingly.

**(AMIT BORKAR, J.)**