IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3020 OF 2016

Mona Limdi and Ors. ...Petitioners
Versus
The State of Maharashtra ...Respondent

Mr. Subhas Jha a/w Mr. Tanmay Malusare, Manoj Chauhan and Siddharth Jhas i/b Law Global Advocates for the Petitioners.

Mr. A.R.Patil, A.P.P for the Respondent-State.

Mr. Faisal Sayyed i/b Manilal Kher Ambalal & Co. for the Respondent No.2.

API Archana Hande, Unit III, EOW, Mumbai.

CORAM : REVATI MOHITE DERE, J.
DATE : 16th MARCH, 2022

P.C. :

1. Heard learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.

3. By this petition the petitioners have impugned the order dated 2nd June, 2016 passed by the learned Additional Chief Metropolitan

Magistrate, 47th Court, Esplanade, Mumbai, below Criminal Application No. 147/N/2015 in C.C.No. 600/PW/2014. By the said order, the learned Magistrate rejected the petitioners' application seeking defreezing of their bank accounts i.e. five bank accounts, three with the ICICI Bank and two with the Bank of Baroda.

4. Mr. Jha, learned Counsel for the petitioners submits that the Police i.e. the Sr. Police Inspector, EOW, Crime Branch, Mumbai had illegally frozen the petitioners' five accounts, without any basis. Learned Counsel submits that all the five accounts were frozen by the Police Authority as an amount of Rs.48,95,980/- had come into the account of the petitioner No.1 Ms. Mona Limdi (in the Bank of Baroda account) from one of the main accused i.e. Vipul Desai and that the said amount was transferred by the petitioner No.1 Mona Limdi to her parents' account, with the Bank of Baroda. He submits that admittedly, the petitioners are not accused in the case, registered as against Vipul Desai and others i.e. C.R.No.150 of 2020 registered with the BKC Police Station, Mumbai (subsequently transferred to EOW, Crime Branch, Mumbai) for the alleged offences punishable under Sections 120B, 406, 409, 420 of the Indian Penal Code. He submits that there was absolutely no justification for the Police to freeze the three accounts of the petitioners with ICICI Bank,

despite no money having been transferred by any of the accused to the said accounts.

5. Mr. Jha further submits that the Police had frozen the five accounts, in complete contravention of the provisions of Section 102(3) of the Criminal Procedure Code (‘Cr.P.C.’ for short). He submits that the Police have clearly contravened the provisions of Section 102 of the Cr.P.C., which is held to be mandatory. He submits that till date, the Police have not informed the Magistrate as contemplated under Section 102(3) of the Cr.P.C. Learned Counsel, in support of the said submission, relied on the Judgments of this Court in the case of ***Manish Khandelwal and Ors. V/s. State of Maharashtra***[1] and in the case of ***Vilas s/o Prabhakar Dange V/s. State of Maharashtra***[2]. Learned Counsel fairly states that the amount of Rs.48,95,980/- allegedly transferred by Ms. Mona Limdi in her parents’ account in Bank of Baroda alongwith accrued interest thereon from 21st September, 2010 be kept in the Fixed Deposit in the name of the appropriate authority, as this Court may direct and deem appropriate.

6. Learned APP, on instructions, does not dispute the fact that none of these petitioners are accused in C.R.No.150 of 2010 registered with

1 2019 SCC OnLine Bom 1412
2 Cr.WP 1033 of 2017 dated 7th December, 2017

the EOW. Learned APP also does not dispute the fact, that out of the five bank accounts, three accounts with the ICICI Bank have no connection with the transaction in connection with the said C.R. As far as the account of petitioner No.1 with the Bank of Baroda is concerned, he submits that the main co-accused - Vipul Desai had transferred Rs.48,95,980/- in the account of the petitioner No.1, who in turn, transferred the said amount in the bank account of her parents' in Bank of Baroda and hence, both the said accounts came to be frozen. Learned APP also does not dispute the fact, that Section 102(3) is mandatory in nature and that in the facts, there is non-compliance of the said provision. He also does not dispute the fact, that till date, the Police have not informed the Magistrate, as mandated under sub-section 3 of Section 102 of the Cr.P.C.

7. Perused the papers. The complaint/FIR was lodged with the BKC Police Station by one Shri. Bholanath Barah, an Assistant General Manager (Risk Contentment Unit) ICICI Bank, alleging offences under Sections 120B r/w 406, 409, 420 of the Indian Penal Code. The said complaint was registered vide C.R.No.150 of 2010. Later, the case was transferred to the EOW. According to the first informant, the accused No.1 - Vipul Desai was working as an Assistant General Manager of ICICI Bank and was entrusted with an additional responsibility of four departments of

the Employees Provident Fund Trust of the ICICI Bank. According to the first informant, as a Secretary of the said four departments, the said accused i.e. Vipul Desai recommended inflated purchase prices of the Government and Public Sector Unit Securities Bonds through the proposals submitted by him to the trustees of the Public Provident Fund Trust of the ICICI Bank and thereby misrepresented the trust. It is alleged by the first informant that the said accused No.1 - Vipul Desai alongwith others conspired to defraud the trust and thereby caused loss to the trust and ICICI Bank to the tune of Rs. 23 Crores and odd. During the course of investigation, the police frozen five bank accounts of the petitioner's, the details of which, are as under;

Sr. No.	Bank Name	Branch Name	Account No.	Balance as on 25/10/2010	Balance as on 10/03/2022
1	Bank of Baroda	V.P.Road Branch, Mumbai	13100100007292	64,83,016.13	98,35,459.13
2	Bank of Baroda	Backbay Reclamation Branch, Fort, Mumbai	03820100018563	29,815.94	4,71,635.94
3	ICICI Bank	Nariman Point Branch, Mumbai	000401004758	11,752.00	19,543.27
4.	ICICI Bank	Nariman Point Branch, Mumbai	000401554170	2,27,272.00	-4,45,959.23
5.	ICICI Bank	Nariman Point Branch, Mumbai	000401000279	1,62,747.00	3,28,513.06

8. As far as the account of the petitioner No.1- Mona Limdi with

the Bank of Baroda is concerned, it appears that an amount of Rs.48,95,980/- was transferred by Vipul Desai (original accused No.1) in the said account and that the petitioner No.1 transferred the said amount, to the bank account of her parents with Bank of Baroda. As far as the bank accounts with ICICI Bank are concerned. Admittedly, there was no transaction with the accused.

9. **Sub-section 3 of Section 102 Cr.P.C. mandates that 'every Police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction ....'** Admittedly, till date, the Investigating Officer has not reported the said accounts i.e. the freezing of the accounts to the learned Magistrate. The decision rendered by this Court in the case of ***Manish Khandelwal and Ors. (supra)*** clearly sets out that the sub-section 3 of Section 102 of the Cr.P.C. is mandatory, inasmuch as, it is incumbent on the Police Authority to report the accounts, so freezed, to the Magistrate. Thus, there is a clear breach of the said provisions under Section 102(3) of the Cr.P.C. In fact, there was no justification for freezing accounts with the ICICI Bank, inasmuch as, there was no transaction by any of the accused with the said banks. The Investigating Officer has clearly without application of mind, frozen the bank accounts from Sr. Nos. 3 to 5 in the chart. As far as the bank account

at Serial No.1 is concerned i.e. account held by the petitioner No.1-Mona Limdi's parents i.e. petitioner No.3 with the Bank of Baroda is concerned, all parties are *ad idem*, that the amount lying in said account i.e. the amount of Rs.48,95,980/- alongwith accrued interest thereon, can be directed to be kept in a Fixed Deposit, without prejudice, till the case is finally disposed of by the trial Court.

10. Accordingly, the account at serial No.2 in the chart i.e. of the petitioner No.1 with the Bank of Baroda (Account No. 03820100018563) be defreezed forthwith alongwith other accounts at Sr. No.3,4 and 5 of the chart. As far as the account of Sr. No.1 is concerned, i.e. account No. 13100100007292 with the Bank of Baroda standing in the name of Rober Limdi and Bhanu Limdi (petitioner No.3) is concerned, the said account is also defreezed, after an amount of Rs.48,95,980/- alongwith accrued interest thereon from 21st September, 2010 till date, is calculated and retained by the bank. The Bank of Baroda to thereafter, forthwith, transfer the said amount i.e. Rs. 48,95,980/- alongwith accrued interest thereon till date (after calculation) to the Registry of the Magistrate Court. The Registry to keep the said amount in a Fixed Deposit till the case pertaining to C.R.No.150 of 2010 is finally disposed of by the trial Court.

11. A copy of this order be sent to the Director General of Police, Maharasthtra State as well as to the Commissioner of Police, Mumbai, so as to ensure that when accounts are freezed, there is proper compliance of sub-section 3 of Section 102 of the Cr.P.C. The Director of Police General and Commissioner of Police to issue appropriate directions to the officers all over Maharashtra and Mumbai City, accordingly.

12. Learned APP to also forward a copy of this order to the Director General of Police, Maharashtra State and Commissioner of Police, Mumbai.

13. Rule is made absolute in the aforesaid terms and the application is accordingly disposed of.

14. All parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.