IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.34 OF 2021

PETITIONER : Ishwar Marotrao Kumbhare,
Aged about 60 years, Occ. Retired, R/o Dhobi Maidan, Near Red cross, Society, Back Side of Rahate Hospital, C.A. Rd., Juni Mangalwari, Nagpur.

..**VERSUS**..

RESPONDENTS : 1. State of Maharashtra,
Through Police Station Officer, Police Station, Wardha.

2. The Asstt. Gen. Manager Bank of Baroda, Dharampeth, Nagpur

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Shri S. V. Sirpurkar, Advocate for Petitioner
Shri M. J. Khan, APP for the Respondent No.1/State.

CORAM : MANISH PITALE AND VALMIKI SA MENEZES, JJ.

DATE : 25th JULY, 2022.

ORAL JUDGMENT : (PER : MANISH PITALE, J.)

1. **Rule**. Rule made returnable forthwith. The criminal writ petition is heard finally with consent of the learned counsel appearing for the parties.

2. The Petitioner has filed the present petition challenging the letter/communication dated 27.08.2020, sent by the Investigating Officer i.e. Respondent no.1 herein to the Respondent no.2 - Bank, thereby freezing bank account of the Petitioner, wherein his pension is regularly deposited.

3. The backdrop in which the aforesaid letter was issued is that First Information Report bearing Crime No.1382 of 2017 dated 09.06.2017 was registered at Police Station, Wardha against the Petitioner for offences punishable under Sections 420, 409, 468 and 471 of the Indian Penal Code (IPC), on the allegation that the Petitioner had misused his position as Bank Manager and sanctioned a huge amount in favour of an entity and that the said amount was misappropriated.

4. It is in this backdrop that the impugned communication was issued, as a consequence of which, the pension account of the Petitioner has been frozen and according to him, he is facing economic hardship, as he stands deprived of his only source of income.

5. On notice being issued in the present petition, a detailed affidavit-in-reply has been filed on behalf of Respondent no.1, wherein the aforesaid action of freezing the bank account of the Petitioner is sought to be justified. Details of the extent of misappropriated amount are given and it is claimed that the action taken by the Investigating Officer under Section 91 of the Code of Criminal Procedure (Cr.P.C.) is justified.

6. Shri Sirpurkar, learned counsel appearing for the Petitioner submitted that the source of power for issuance of such a communication could not have been Section 91 of the Cr.P.C., which pertains to summons to produce a document or other things and perhaps the power could be sourced to Section 102 of the Cr.P.C., which pertains to power of a Police Officer to seize certain documents. It is submitted that even if the Investigating Officer, in the present case could have taken recourse to Section 102 of the Cr.P.C., in terms of the law laid down by the Hon'ble Supreme Court in the case of **State of Maharashtra ..Vrs.. Tapas D. Neogy, 1999 (7) SCC 685**, followed by this Court in the case of **Gulam Sarvar S/o Farukh**

Khan ..Vrs.. State of Maharashtra and others, 2018 SCC OnLine Bom.164, the account of the petitioner could have been frozen only in specific circumstances mentioned in Section 102 of the Cr.P.C. It was submitted that none of such circumstances exists in the present case and that therefore, the present petition deserves to be allowed.

7. On the other hand, Shri Khan, learned Assistant Public Prosecutor appearing for the Respondent no.1 submitted that the details of the extent of misappropriation of amount on the part of the Petitioner was stated in the reply. The bank accounts opened by the Petitioner for misappropriating huge amounts were also stated, which indicated the extent of involvement of the Petitioner in the said bank. Reference was also made to Section 102 of the Cr.P.C. and it was submitted that in the facts and circumstances of the present case, the impugned communication does not deserve interference..

8. Before adverting to the facts of the present case, it would be appropriate to refer the position of law clarified by the Hon'ble Supreme Court in the case of *State of*

Maharashtra ..Vrs.. Tapas D. Neogy (supra). After having taken note of the divergent views taken by the different High Courts, the Hon'ble Supreme Court held as follows :

> "12. Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be "property" within the meaning of said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the Courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the Courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore, persuaded to take the view that the bank account of the accused or any of his relations is "property" within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into. The contrary view expressed by Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law."

9. In the case of *Gulam Sarvar S/o Farukh Khan ..Vrs.. State of Maharashtra and others* (supra), a learned Single Judge of this Court referred to a Section 102 of the Cr.P.C. and held as follows :

> "13. Power under Section 102 of the Code of Criminal Procedure can be invoked by a Police Officer only when the property to be seized is alleged or suspected to have been stolen or which is found under such circumstances as to create suspicion of commission of any offence, so that such seizure provides effective assistance to him in the investigation. To exercise this power, it is not necessary for the Investigating Officer to justify the seizure of bank account by collecting evidence as if a trial is being held and it is enough for him to justify his action by reasonably showing that the amount in the account creates a reasonable suspicion of commission of crime. However, it is necessary in a case where account has been seized or frozen under Section 102(1) Cr.P.C., it being a property not capable of being transported to Court or actually held in custody by the Police, to report the seizure to the Magistrate, as required under sub-Section (3) of Section 102 Cr.P.C. A useful reference in this regard may be had to the cases of *State of Maharashtra Vs. Tapas D. Neogy, reported in (1999) 7 SCC 685* and *Teesta Atul Setalvad Vs. State of Gujarat, Criminal Appeal No.1099/2017* decided by Hon'ble Apex Court on 15.12.2017."

10. Thus, there can be no quarrel with the proposition that an Investigating Officer can exercise power under Section 102 of the Cr.P.C. to direct freezing of bank account of an

accused person, but the same can be done only in the contingencies specified in the said provision and the position of law as clarified by the Hon'ble Supreme Court and this Court, noted above.

11. Applying the said position of the law to the facts of the present case, it becomes evident that the impugned communication is unsustainable. There is no material to indicate that the misappropriated amount in any manner found its way into the aforesaid bank account of the Petitioner, where his pension is being regularly deposited or that any link is established even *prima facie* with the said bank account. In the absence of such material, there was no basis for the Investigating Officer to have issued the impugned communication dated 27.08.2020, whereby the said bank account of the Petitioner was frozen.

12. A perusal of the statement of the bank account shows that there are periodic entries pertaining to the monthly pension of the Petitioner being deposited. To allow continuance of freezing of the said bank account would

obviously cause economic hardship to the Petitioner, which is not justified in the facts and circumstances of the present case.

13. In view of the above, criminal writ petition is allowed in terms of prayer Clause (1), which reads as follows :

> 1. Quash and set aside the Letter dated 27.08.2020 (Annexure-IV) by respondent i.e. police station, Wardha, Dist. Wardha to Bank of Baroda Dharampeth Branch, Nagpur for account no.04650100011402 and further direct respondent i.e. police station, Wardha, Dist. Wardha to de-freeze the account of the petitioner with Bank of Baroda, Dharampeth Branch, Nagpur bearing account no.04650100011402.

14. Rule made absolute in the above terms.

(VALMIKI SA MENEZES, J.)   (MANISH PITALE, J.)

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