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

CRIMINAL WRIT PETITION NO. 695 OF 2021

Uttam @ Baba Sapan Senapati Aged 40 years, occ. Begging (Transgender), R/o Plot No.31, Kaamna Nagar, Near Durga Kirana Store, Police Station Kalamna, Distt. Nagpur. Presently in Jail.

... PETITIONER

VERSUS

State of Maharashtra,
through Police Station, Kalamna,
Nagpur.

... **RESPONDENT**

Shri Rajesh S. Nayak, Advocate for the petitioner.
Shri H.D. Dubey, A.P.P. for respondent-State.

CORAM : VINAY JOSHI, J.
JUDGMENT RESERVED ON : 01.08.2022.
JUDGMENT PRONOUNCED ON : 05.08.2022

JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of both the parties.

3. The petitioner raises a challenge to the order dated

28.08.2020 passed by the Additional Sessions Judge, Nagpur thereby rejecting the petitioner's application for defreezing the bank accounts.

4. It is the petitioner's case that he holds three savings bank accounts at State Bank of India, Panchpaoli Branch, Nagpur. The petitioner was arrested in Crime No.491 of 2019 for the offences punishable under Sections 302, 307, 341, 323, 143, 147, 148, 149 of the Indian Penal Code read with Section 135 of the Maharashtra Police Act, 1951 alleging the offence of murder. During the course of investigation, the Investigating Officer has freezed the petitioner's bank accounts. The petitioner has applied for defreezing of his respective bank accounts, however, it has been rejected.

5. Learned Counsel appearing for the petitioner primly canvassed that the Trial Court has not considered the mandate of Section 102(3) of the Code of Criminal Procedure (hereinafter referred to as 'the Code'). It is submitted that the Investigating Officer was under legal obligation to submit forthwith the report of the seizure to the Magistrate, however for non-compliance of said provision, the impugned seizure is illegal, bad in law. On said ground alone the impugned order requires to be set aside. Moreover, it is canvassed that

the amount lying in bank account has no nexus with the crime, and thus, the seizure itself is illegal.

6. On the other hand, learned A.P.P. appearing for the respondent/State has supported the impugned order. It is contended that the amount which was lying in the petitioner's bank account, has close nexus with the crime. It is submitted that the petitioner was the head of transgender group. They used to do work of Badhai/begging and thus, the amount collected from said work, was deposited in the petitioner's bank account being head of the transgender group. It is submitted that the said amount was not petitioner's individual amount, but it was a collection of all group members.

7. Learned A.P.P. though conceded that the provisions of Section 102(3) of the Code have not been followed, however he has submitted that since the said amount was not a stolen property, there is no necessity to follow the mandate of Section 102(3) of the Code. Though learned A.P.P. submitted that provisions of Section 102 of the Code are not applicable, he is unable to point out any other provision under which seizure could be made. Moreover, it is submitted that the procedure contemplated under Section 102(3) of the Code is of

directory nature and it's non-compliance is a mere irregularity.

8. At the instance of report dated 04.06.2019 lodged by one Rashi Khobragade (transgender), the crime was registered. It is the prosecution case, that the petitioner was a leader of transgender group, who used to collect money by claiming alms. The amount received from the activities of the gang was credited in the petitioner's bank account, so as to distribute at later stage. There was a dispute in between the petitioner and the other gang members about distribution of money. On that count, on 04.06.2019, the petitioner along with co-accused by hatching conspiracy have committed a murder of another transgender namely Pravin @ Chamcham Gajbhiye and therefore, the report.

9. It is not in dispute that the petitioner was holding three bank accounts in his singular or joint name. It is also not disputed that at the instance of Investigating Officer, the concern bank accounts having total sum of Rs.8,48,141/-, has been freezed. Moreover, the Investigating Officer vide its additional reply has conceded that provisions of Section 102(3) of the Code, have not been followed.

10. The learned Counsel for the petitioner while canvassing the

mandatory nature of Section 102(3) of the Code has relied on the decision of this Court in case of ***Manish Khandelwal & ors vs. The State of Maharashtra & ors. 2019 ALL MR (Cri) 3580***. In said case the similar issue arose about the nature, ambit and scope of Section 102(3) of the Code. After considering various reported decisions, this Court took a view that the Investigating Officer is duty bound to report the seizure to the Magistrate having jurisdiction and thus, non-compliance of Section 102(3) of the Code vitiates the entire seizure. Though the petitioner also relied on the decision of the Supreme Court in case of ***OPTO Circuit India Ltd. vs. Axiz Bank & ors. 2021 ALL SCR (Cri) 400*** however, being distinct facts, it is of no assistance.

11. The petitioner was arrested for the offence of murder, which has no direct nexus with the petitioner's bank accounts. It is the prosecution case, that the sum at the credit of the petitioner's bank account was fallout of the income of Group. Learned A.P.P. is unable to point out any provision of seizure besides Section 102 of the Code. Unless there is a source or power conferred by the Code, the Investigating Officer cannot justify his action. The Investigating Officer can seize a property if such a property is alleged to be stolen or suspected to be stolen the property is linked with the commission of

offence. Obviously, the property which does not relates to the commission of crime, cannot be seized.

12. It is the petitioner's main contention that the seizure can be only under Section 102 of the Code, therefore the Investigating Officer ought to have followed the mandate of Sub-Section 3 to Section 102 of the Code by immediately reporting the seizure to the Magistrate having jurisdiction. In above referred case of Manish Khandelwal (*supra*), this Court has elaborately dealt the issue and held that compliance of Sub-section 3 of Section 102 of the Code, is of mandatory nature. The petitioner is having legitimate right to use his money lying at his bank account. Any sort of deprivation of legitimate right without following statutory mandate would vitiates the action. Apparently, the mandatory provisions have not been followed in the case in hand. Moreover, the State is unable to point out any other provision under which amount can be freezed. Thus, for the very reason of non-compliance of the statutory mandate, action of freezing bank account vitiates. Therefore the order passed by the Trial Court would not sustain in the eyes of law and requires to be set aside.

13. In view of the above, petition succeeds. The impugned

order dated 28.08.2020 passed by the Trial Court in Sessions Case No.576 of 2019 is hereby quashed and set aside. The action of Investigating Officer of freezing the petitioner's bank accounts, is set aside. The petition stands disposed of in above terms.

(VINAY JOSHI, J.)

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