IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.608 OF 2023

PRAVIN GOPALRAO MANKAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr. S. S. Jadhavar, Advocate for the petitioner
Mrs. G. L. Deshpande, APP for the respondent/State

CORAM : R. M. JOSHI, J.
DATE : 18th AUGUST, 2023

P.C. :-

1. This petition takes exception to the order dated 15th February, 2023 passed in Criminal Misc. Application No. 93 of 2022 by Addl. Sessions Judge, Ahmednagar rejecting application of the petitioner for return of cash of Rs.11,50,000/- seized from his house under search panchnama dated 20th January, 2021 and directing Anti Corruption Bureau Officer to invest the said amount in fixed deposit in any nationalize bank in the name of Deputy Superintendent of Police, Anti Corruption Bureau, Ahmednagar for locking period of three years to be renewed from time to time till conclusion of trial.

2. Learned counsel for the applicant submits that an offence came to be registered against him vide Crime No. 924/2021 for the offence punishable under Section 7 of the Prevention of Corruption Act (for short

'Act') at the instance of Harshal Mhaske who has alleged that the petitioner had demanded a sum of Rs.25,000/- as bribe for passing bill of the complainant. During the course of investigation of the said crime the house of the applicant was searched on 20/10/2021 and cash of Rs. 11,50,000/- came to be seized from his house.

3. It is the contention of the petitioner that the said amount was borrowed by him from his friend and the said transaction is duly accounted and reflected in the income tax returns of the said person. It is submitted that the said amount was obtained by way of hand loan and that amount of Rs.10 lakhs was obtained by way of hand loan and the remaining amount of Rs.1,50,000/- was personal savings of the petitioner.

4. Learned counsel for the applicant submits that in the instant case the offence charged against the present petitioner is punishable under Section 7 of the Act and that it is not the case of successful trap. It is his further submission that the petitioner has on the basis of documentary evidence had substantiated that the amount of Rs.10 lakhs was received from Namdeo Bhapkar and said amount is duly reflected in the statement of account of the said Bhapkar as well as in the income tax returns filed by him for the assessment year 2022-23. It is his

submission that the amounts seized from the house of present petitioner as no connection with the crime in question and hence learned Addl. Sessions Judge has committed error in not returning the same. He has further grievance in respect of the learned Judge directing the amount to be kept in fixed deposit, as amount in question was obtained by way of hand loan and it is necessary for the petitioner to return the same. Thus according to him order of keeping the amount in the fixed deposit is not justified.

5. Learned APP opposed the application with the submission that an open inquiry has been contemplated against the present petitioner. She instructions however made a statement that till date the said inquiry has not been ordered. However it is her contention that since the offence is registered against the present petitioner under the Prevention of Corruption Act, it would be in interest the of justice that the amount which is seized from his house is kept in the fixed deposit as directed of the learned Addl. Sessions Judge.

6. *Prima facie* perusal of the record indicates that it is not a case that any bribe amount has been accepted by the present petitioner. The allegations against the present petitioner is of demand of bribe from complainant. Thus, at this stage it can be safely held that the amount

seized from the house of present petitioner has no nexus with the crime in question.

7. It would have been a different case if the petitioner was unable to satisfactorily explained the possession of cash of Rs.10 lakhs. In this regard however the documents placed on record (genuineness is not dispute) show that the amount of Rs.10 lakhs was received by the petitioner fromy his friend as hand loan through bank transaction. Similarly the said transaction is reflected in the income tax returns filed by him for the assessment year 2022-23. Thus, there is ample ample evidence on record indicating that the amount of Rs.10 lakhs is by way of hand loan received by the petitioner from Namdeo Bhapkar. As far as cash of Rs.1,50,000/- is concerned at this stage his explanation about the said amount being from his savings deserves acceptance.

8. Since amount Rs.10 lakhs was received by way of hand loan by the petitioner and as he would be required to repay the same, the order of the Addl. Sessions Judge of investing the said amount in the fixed deposit is not justified. There is no reason to discard submissions of the learned counsel for the petitioner that the petitioner wants to be returned the said money to the lender and hence needs its custody.

9. Having regard to the aforesaid facts the impugned order passed by the Addl. Sessions Judge cannot sustain and hereby set aside. Criminal Misc. Application No. 93/2022 stands allowed. By directing the applicant to submit appropriate undertaking/ indemnity coupled with solvent surety the amount be returned to him along with accrued interest till the release of the amount.

(R. M. JOSHI, J.)

ssp