IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

35 CRIMINAL WRIT PETITION NO. 710 OF 2022

MANISH S/O KONDU CHIDRAWAR
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Petitioner : Mr. Sanket Jangle h/f Mr. Rahul R. Karpe
APP for Respondent-State : Smt. D. S. Jape

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CORAM : KISHORE C. SANT, J.
DATED : 02.03.2023

PER COURT :-

1. The present writ petition is by the person in whose account the accused, namely, Komal Kasar has transferred the amount. Said Komal Kasar is the accused in crime no. 100/2021 registered with Shrigonda Police Station for the offence punishable under Sections 419, 420, 465, 467, 468 and 471 r/w 34 of IPC wherein it is alleged that all the accused persons in a syndicate have committed the above offence. It is alleged that accused Komal has transferred an amount in the account of the present applicant totaling Rs.19,40,000/-. Out of the said amount, Rs.9,40,000/- was transferred on 19.10.2020 i.e. prior to registration of the offence and prior to the alleged transaction between Komal and one Suryakant. The sale deed is of 14.07.2020. During investigation the police is found that the amount transferred

in the account of the present applicant by said Komal is the amount she had received for which now she is made accused. The case of the present petitioner is that in fact he had received the amount towards the transaction pursuant to the agreement of sale that was entered into between himself and Komal and this amount has nothing to do with the amount involved in the offence. The remaining amount of Rs.10,00,000/- was transferred by RTGS on 10.11.2020. Now, allegation is that the amount of Rs.10,00,000/- is out of the transaction involved in the alleged offence.

2. The petitioner states that this amount is unnecessarily freezed by the investigating machinery. He had therefore filed an application below Exhibit 28 in RCC No. 281 of 2021 which is lodged pursuant to the lodging of the offence. However, the said application came to be rejected by learned J.M.F.C., Shrigonda vide order dated 05.10.2021 and petitioner therefore preferred a revision in the Court of learned Sessions Judge, Shrigonda. Learned Sessions Judge, while dismissing the revision by order dated 05.01.2022, has observed that inference can be drawn that petitioner and Komal are hand in gloves and therefore the amount cannot be returned.

3. Considering the nature of the dispute, it can safely be said that earlier amount of Rs.9,40,000/- was transferred by Komal in the account of the present petitioner towards transaction and it has nothing to do with the amount involved in the offence.

4. Learned APP opposes the petition stating that in fact in the investigation it transpired that the accused persons, including Komal, have committed the offence in respect of these amounts and those which have been siphoned in the accounts of other persons. The transfer of amount which is in question in the present petition was also by way siphoning the fund in favour of the present petitioner. She has pointed out the entries in the pass-book from the accused. She has also invited attention to the statement recorded of this petitioner wherein he has accepted that this amount had come to his account from the accused. She thus vehemently opposes the petition. She has also pointed out the sale deed and submits that the sale deed is in fact dated 14.07.2020 i.e. executed by one Anand Shejwal in favour of Suryakant and therefore, this amount which was transferred can be said to be amount in the offence.

5. Considering these submissions, this Court found that so far as the first installment of Rs.9,40,000/- transferred to the account of the

present petitioner, the same *prima facie* appears to be towards the transaction between the parties and this petitioner has no concern with the accused persons in their alleged activities. Therefore, this Court finds that at least to the extent of Rs.9,40,000/- can be allowed to be withdrawn by the petitioner by giving security towards the said amount to the satisfaction of the trial court. Hence, the following order:

ORDER

I. The petition is partly allowed to the extent of amount of Rs.9,40,000/-.

II. The trial court to allow the petitioner to utilize the amount of Rs.9,40,000/- out of the amount that is freezed by the investigating officer, on his furnishing security to the satisfaction of the court.

III. The petition is accordingly disposed off.

[KISHORE C. SANT, J.]

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