IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1018 OF 2023

MOHAMED IBRAHIM A.
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr. R. G. Hange, Advocate for the petitioner
Mr. S. P. Sonpawale, APP for the respondent/State

CORAM	:	**R. M. JOSHI, J.**
RESERVED ON	:	**19/10/2023**
PRONOUNCED ON	:	**25/10/2023**

ORDER :-

1. This petition under Article 227 of the Constitution of India takes exception to the order dated 9th June, 2023 passed in Criminal Revision No. 41 of 2023 and Criminal Revision No. 42 of 2023 by Addl. Sessions Judge, Beed against the orders passed below Exhibits 88 and 91 in R.C.C. No. 348 of 2022 confirming the said orders.

2. Petitioner holds saving bank account No. 18620100000111 with Federal Bank, Ltd at Thiruvananthapuram/Chalai branch. The said account was freezed by police in connection with Crime No. 40 of 2022 registered with Beed City Police Station for the offences under Section 420 of IPC and under Sections 66, 66(A), 66(C) and 66 (D) of Information Technology Act. The said crime came to be registered on

the basis of information given by Mohammad Fahimoddin Abdul Rahim stating that he received a video indicating that he has earned a lottery wherein he is entitled to get a car and cash of Rs.25 lakhs. He, therefore, contacted the person on the mobile number disclosed therein. Informant was told that he is required to pay some amount towards taxes in order to get car and money. Thereafter from time to time for different reasons he was called upon to deposit money in various accounts. Informant deposited a total sum of Rs.2,92,300/-. Later on he did not get any response from those persons and being duped lodged report. After investigation case is registered as R.C.C. No. 348 of 2022.

3. In R.C.C. No. 348 of 2022 informant filed an application Exhibit 88 for permitting him to withdraw money from the freezed account, which was allowed by order dated 18th April, 2023. Thereafter present petitioner filed application before Magistrate being Exhibit 91 for defreezing of his account. It is claimed by the petitioner that in the year 1991 he went to Saudi Arabia and earned salary by working as a helper in a grocery shop. He came back to India in September, 2022. The said account was opened in the year 2012. Before coming to India he came to know that his account has been freezed in connection with

Crime No. 40 of 2022. He requested the bank to defreeze the same, which request was refused, hence application was filed before the Magistrate.

4. The said application was opposed by the prosecution. By passing order dated 4th May, 2023 learned Magistrate rejected the said application holding that there is prima facie evidence showing the nexus of the account of petitioner with the crime in question. It is specifically observed that informant had transferred money in to the various accounts including the account of accused Amitkumar who had transferred sum of Rs.2 lakhs in to the account of petitioner. It is further observed that the investigation in to the crime is still in progress and having regard to the nature of offence it is not a fit case for defreezing the account.

5. Learned counsel for the petitioner submitted that there is no dispute about the fact that except for a sum of Rs.2 lakhs the other money in the account of the petitioner has no nexus with the crime in question. It is his submission that the said amount of Rs.2 lakhs be kept freezed however, the remaining amount is required for utilization of petitioner. It is also submitted that the said amount is earned by him

by working at Saudi Arabia.

6. Learned APP opposed the application by submitting that prima facie there is evidence to show that the bank account of petitioner was used for the purpose of diverting the money involved in this crime. It is submitted that though charge-sheet has been filed against some of the accused person however, other accused are still absconding and the investigation is yet to be completed. It is his contention that the volume of crime is not limited to informant and apparently it is a syndicate operating to dupe people.

7. Record indicates that application filed by the informant for transfer of the amounts from various seized account is allowed by the learned Magistrate due to the recording of no objection by the Investigating Agency. As far as present petitioner is concerned, apparently sum of Rs.2 lakhs which is deposited in to the account of petitioner by Amitkumar is transferred by the informant and it has connection with crime in question. Thus, the order of learned Magistrate even allowing a sum of Rs. 2 lakhs to be withdrawn from the account of present petitioner cannot be faulted with.

8. As far as the claim of the petitioner of defreezing of the account is concerned, in the application before the learned Magistrate he has not explained the entries by indicating the source of credit of the said amounts in to his account. There is prima facie material on record to show that from one of the accused i.e. Amitkumar a sum of Rs.2 lakhs has been transferred in to the account of petitioner. Petitioner does not explain as to the purpose for which the said amount was transferred. Thus, at this stage, there is reason to believe that the account of present petitioner is used for diverting money involved in the crime. As rightly recorded by the learned Magistrate that the investigation in to the crime is yet to be over as the co-accused are not yet arrested. Merely because charge-sheet has been filed against the arrested accused it cannot be concluded that the investigation of crime is entirely over. There is substance in the contention of the learned APP that this could be racket involving the number of other accused persons and victims therein and hence further investigation is must.

9. As far as defreezing of the account is concerned, Section 102 of Cr.P.C. empowers a police officer to seize certain property. The seizure of property is permissible when it is suspected to have been stolen or which may be found under the circumstances which create suspicion of

the Commission of any offence. In respect of Bank accounts, if investigating agency finds that the bank account has suspicious entries having nexus with crime under investigation, it would be necessary to preserve the said evidence. In the instance cast investigation conducted, prima facie shows use of account of petitioner for diversion of funds of crime. In any case, the petitioner herein has not challenged the power of the police officer to freeze this account.

10. Once the petitioner fails to prima facie show that the account is sought to be defreeze by him has no nexus with the crime in question and also does not explain the credit entries therein which would indicate that those entries have nothing to do with the crime in question, he was not open for the learned Magistrate to defreeze the said account. In the aforesaid circumstances, this Court finds no merit in the petition. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp