

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

57 CRIMINAL WRIT PETITION NO.1845 OF 2022

**DILIP KALUSINGH NIMROT
VERSUS
THE STATE OF MAHARASHTRA**

Mr.PP. Dawalkar, Advocate for the petitioner.
Mr.Y.G.Gujarati, APP for the respondent/State.

**CORAM : KISHORE C. SANT, J.
DATED : 15.02.2023**

PC :-

01. At the outset, the learned Advocate for the petitioner seeks leave to amend prayer clause (B) of the petition.

02. Leave granted. The amendment be carried out forthwith.

03. Heard learned Advocates for the parties. The petition is taken up for final disposal by consent of the parties.

04. The petitioner-accused in Crime No.143 of 2022 registered with Mohadi Police Station, Dist. Dhule is before this Court with two prayers which are rejected by the Trial Court i.e. (i) that the account of the petitioner be

defreezed and (ii) to release the truck belonging to the petitioner.

05. The crime is registered against almost eight persons. Present petitioner and his deceased brother Jyotisingh are also made accused. The main allegation is that the accused and his brother were dealing in Soybean seeds. It was found that they have shown more weight than the actual weight and thereby they have committed fraud of Rs.1,20,00,000/-. The fraud is in two ways. First, that the weight was shown in excess of the actual weight and secondly inferior quality of soybean was sold. The informant lodged the FIR through Manager of the company, namely, Shri Agrotech Private Limited. Pursuant to the FIR, the investigation started. The police authorities gave letters to the bank where the petitioner's accounts are freezed and truck belonging to the petitioner bearing No. MH-18-BG-4637 is also came to be seized.

06. The petitioner filed application under section 457 of the Cr.P.C. in the Court of JMFC, Dhule bearing Criminal M.A. No.1016 of 2022 for the above said reliefs. The learned Trial Court by order dated 15.11.2022, however, rejected the application. While rejecting the application, so far as

release of the truck is concerned, the Court has given reason that the applicant has not produced original verified copy of RC book on record. For not defreezing the accounts, the learned Court below assigned reason that huge amount is involved in the crime and the applicant has cheated the informant company by committing misappropriation of Rs.1,62,55,060/-.

07. The learned Advocate for the petitioner vehemently submits that the accounts are freezed in violation of section 102 of the Cr.P.C. It was incumbent on the part of the Investigating Officer to immediately communicate to the Court under section 102(3) of the Cr.P.C. and intimate the Court about the freezing of the accounts and the said aspect is not properly appreciated by the learned Trial Judge. So far as release of the truck is concerned, he submits that he will produce original RC book on record. Therefore, there is no difficulty in allowing the prayer, since that prayer was rejected only for non-production of original RC book. In view of above, the petitioner will produce original RC book. Thus, said prayer deserves to be allowed.

08. So far as, prayer of defreezing of the accounts is concerned, it

requires some consideration. The learned Advocate for the petitioner submitted that at the time of allowing the bail application, this Hon'ble Court has imposed condition upon himself and his late brother to deposit Rs.20,00,000/-. Accordingly both have deposited the amount in the Trial Court, which is still lying in the Trial Court. As there is unfortunate death of petitioner's brother Jyotisingh, the petitioner still maintains statement that he will not touch that amount of Rs.20,00,000/- deposited by deceased Jyotisingh. It is submission of the learned Advocate for the petitioner that there are total eight accused persons shown in the crime and total amount of alleged appropriation is Rs.1,62,55,060/-. He has deposited amount almost equal to his liability, taking the allegations as it is. On this factual count also he prays for defreezing of the accounts. In support of his submissions, he relies upon judgment in the case of **P. Chandrasekar Vs. Inspector of Police Salem and Anr.**, reported in **2003 CRI.L.J.294**. Para 11, which reads as follows :-

“11. The respondents/police has also not followed the mandatory requirements of Section 102 of Cr.PC. The police officer shall forthwith report the same to the Magistrate and also give notice to the petitioner and allow him to operate the bank account subject to executing a bond undertaking to produce the amount in Court, as and when required as contemplated in clause 3 of Section 102, but not given any such notice. Even the copy of prohibitory order was not served to the petitioner”.

09. On asking the learned APP as to whether there is any material to show that in this case the Investigating Officer has given intimation to the Trial Court, the learned APP submits that from record it does not appear that such notice was given. He submits that this fact is to be intimated at the time of submitting supplementary charge-sheet, however, since some accused persons were absconding, the intimation could not be given to the Court. The learned APP relies upon judgment in the case of **State of Maharashtra Vs. Tapas B. Neogy** reported in **1999 (3) SCC 685** to submit that the police authorities have ample power to freeze the amount and therefore submits that the accounts have been rightly freezed. It is held in the said judgment that the bank account also includes property. Therefore, the police machinery has every right to freeze the bank account. Thus, he submits that the order is rightly passed by the Trial Court and no interference be called for in the order.

10. Considering the submissions, this Court finds that the applicant has already deposited the amount of Rs.20 lakhs. The amount of Rs.20 lakhs is also deposited by his late brother Jyotisingh. Considering that there are total eight accused persons, some accused persons are also absconding and it

is not certain as to when the Trial would be over. To keep the account in freezed condition would certainly cause greater hardship to the petitioner. This Court finds that the accounts, therefore can be defreezed on certain conditions. Hence, the following order :-

ORDER

- (i) The writ petition is allowed.
- (ii) The truck of the petitioner bearing No. MH-18-BG-4637 be released on producing original R.C. Book.
- (iii) The petitioner shall give an undertaking to the Court that he will not withdraw the amount of Rs.20,00,000/- (Rupees Twenty Lakhs) till conclusion of the Trial.
- (iv) The petitioner shall also not withdraw the amount of Rs.20,00,000/- (Rupees Twenty Lakhs) deposited by his late brother – Jyotisingh.
- (v) The petitioner shall further give an undertaking that in-case it is ordered to deposit the amount to show the bonafides, he shall deposit amount equal to the amount standing in his account as on today, as and when directed by the Court during the Trial.

- (vi) Till the Trial, the petitioner shall not dispose off other property standing in his name, as per details to be provided by the petitioner to the Investigating Officer within a period of two weeks from today.
- (vi) This order shall come into effect after the above conditions are fulfilled.

[KISHORE C. SANT, J.]