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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 703 OF 2021**

Mr. Sudhir Vasant Karnataki

.... Appellant.

V/s

The State of Maharashtra

.... Respondent.

Mr. Aniket Vagal i/b Parth Shah for the Appellant.

Ms. M.H. Mhatre, APP for the State.

Mr. R. N. Raje, ACP, Lashkar Division, Pune City, present.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ.**

DATED : AUGUST 02, 2023

PC.:

- 1] We have heard respective Counsel.

- 2] The challenge in the Petition is to the order of freezing of Bank Account of the Appellant for the offence punishable under the provisions of MCOCA. Prayer of the Appellant for de-freezing the Account which was freezed during the course of investigation was turned down vide impugned order passed by the designated MCOCA Court.

- 3] Submissions of Mr. Vagal, learned Counsel for the Appellant are,

provisions of Section 102 empower the Police Officer to seize property which may be allegedly or suspected to have gained by the accused at the time of commission of offence.

4] Sub-section (2) of Section 102 of the Cr.P.C. contemplates the reporting of seizure by subordinate Police Officer to Supervisory Officer forthwith whereas sub-section (3) contemplates intimation about seizure to the Magistrate which is required to be done forthwith by submitting a report. According to the learned Counsel for the Appellant, seizure was never reported viz freezing of the Bank Account of the Appellant, as the amount lying therein is claimed to have been earned by the Appellant in the commission of crime. According to him, provisions of sub-section (3) of section 102 are mandatory in nature.

5] Learned APP on instructions submits that designated Court had no occasion to consider prayer of the Appellant in the backdrop of the aforesaid legal submissions as the issue was never canvassed by the Appellant before the designated Court. As such, according to her, matter can be remanded for fresh consideration.

6] We have appreciated rival submissions. From the affidavit submitted by the Respondent's Officer, it is apparent that provisions of sub-section (3) of Section 102 are not complied with at the time of freezing of the Bank Account of the Appellant. In this backdrop, since the Respondent has failed to demonstrate compliance of Section 102 of the Cr.P.C at the time of freezing of the Account of the Appellant, order of freezing the Account renders illegal as the same is contrary to the legal mandate under sub-section (3) of Section 102 of the Cr.P.C.

7] However, having regard to the observations made by designated Court in the matter of rejection of submission of the Appellant of there being no sufficient material available against him and in view of material available on record against the Appellant, we deem it appropriate to grant liberty to the Investigating Agency to take out fresh proceedings for seizure in accordance with the provisions of Section 102 of the Cr.P.C. If such proceedings are taken out by the Respondent and Respondent freezes the Account which is subject matter of the present Appeal based on the order passed therein, we

deem it appropriate to grant liberty to the Appellant to question such order.

8] In this backdrop, order impugned passed by the designated Court, so also order freezing is hereby quashed and set aside. As prayed by the learned APP, we deem it appropriate to restrain the Appellant from operating the Bank Account for a period of four weeks from today.

9] Appeal stands disposed of accordingly.

(R. N. LADDHA, J.)

(NITIN W. SAMBRE, J.)