IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPP) NO. 439/2023 IN CRIMINAL APPLICATION (ABA) NO. 771/2022 (D)

Ramakant Anantrao Kulkarni V/s State of Maharashtra

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Mr A.P. Wachasunder, counsel for the applicant.
Mr A.M. Kadukar, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.
DATE OF RESERVE : 18/07/2023.
DATE OF DECISION : 04/08/2023

1. Heard.

2. The present application is preferred for de-freezing the bank account which was freezed by the Investigating Agency, during the investigation of crime No. 226/2022.

3. As per the contention of the applicant, he was in the employment of the Indian Post Office and is now retired from the service, one crime was registered against him and his daughter. Thereafter, he applied for anticipatory bail application. This Court has allowed the anticipatory bail application and released him on bail. In the event of his arrest in respect of crime No. 226/2022, the Investigating Officer has thereafter freezed the account of the applicant, alleging that the bank

transactions included an amount of Rs. 11,67,790/- has taken place in the said account. The said bank account, however, continues to be withheld and frozen by the respondent. Due to which, the applicant is enabled to utilize his retirement dues, credited in the said account which are required for day-to-day expenditure, and therefore, prays for defreezing of the account.

4. The said application is strongly opposed by the State on the ground that the Pension Account of the present applicant is a separate account, wherein all his retirement benefits are deposited and said account is in operation. The bank account which is freezed by the respondent is not used or rather was never used by the applicant for the purpose of his service-related transactions.

5. It is further contention of the State that the amount of Rs. 13,22,990/- is transferred in the account of the present applicant. If the present applicant is allowed to use that account, there is every chance that he would withdraw the said amount which would affect the interest of the Depositors.

6. Heard Mr A.P. Wachasunder, learned counsel for the applicant. He reiterated the contention and submitted that while releasing him on bail, this Court has observed that if the bank statement of the applicant is considered,

the applicant has received amount of Rs. 60,000/- and odd. After the said date till 05/02/2022 on various occasions, however, there is nothing to show that the said amount was received by the applicant from the amount the informant paid. Thus the allegation that the applicant allured the investors to invest the amount are general in nature, and there is nothing to say that any benefit is received by the applicant from the amount deposited by the informant in this case. He further placed reliance on the case of ***Dr. Shashikant D. Karnik vs The State Of Maharashtra reported in 2008 Criminal Law Journal 148***, wherein it is held that there is no provision in Code of Criminal Procedure, firstly to issue orders oral or written of stopping the operation of bank account before attachment or seizure and then passed second order of attachment of account. There is nothing like empowering the Police Officer to issue ad-interim or temporary order to stopping the operation and then final order of attachment of the account. If the issue any order of stopping operation of the account, it has to be treated as action under Section 102 of the Code of Criminal Procedure resulting in seizure i.e. attachment of the account and if i.e. so, the compliance of all the three requirements of Section 102 is must.

7. Whereas the learned APP Mr A.M.Kadukar submitted that from the investigation papers it reveals

that the amount of Rs. 13,22,990/- is transferred in the name of the present applicant and therefore, if he is permitted to operate the said account, the interest of the investors would affect and therefore, the application deserves to be rejected.

8. I have perused the order passed by this Court, while releasing the present applicant on bail on 28/11/2022, this Court has observed that it is alleged that applicant has received Rs. 13,22,990/- from his daughter. However, this bank statement of the applicant is considered, the applicant has received the amount of Rs. 60,000/- and odd, after the said date till 05/02/2022 on various occasions. However, there is nothing to show that the said amount was received by the applicant from the amount, the informant has paid. There is a general allegations against the present applicant. As far as the account details is concerned, admittedly there is nothing on record to show that the applicant has received total Rs. 13,22,990/- from the co-accused. As far as defreeizing of the account is concerned, admittedly the Investigating Officer has to comply with Section 102 of the Code of Criminal Procedure:

Section 102 empowers the Police Officer to seize the certain property :

Section 102 says that ;

> *(1) Any police officer, may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.*
>
> *(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.*
>
> *(3) Every police officer acting under sub- section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.*

9. Thus, first requirement under Section 102 of the Code of Criminal Procedure, 1973 is that the seizure of the property by the Police Officer by exercising the powers under Section 102 of the Code of Criminal Procedure. In view of sub-section (1), it is obligatory upon the Police Officer to show that the property which they want to attach or attaching is under circumstances, which creates suspicion of the commission of any offence. The State has not been able to show that even the prima-facie that the amount in the accounts as any connection with the amount which is paid by the informant. There is nothing on record to show that any action taken in giving oral instructions of stopping the operation of the account or in issuing written directions to stopping the operation of

account, is in view of Section 102 of the Code of Criminal Procedure.

10. In view of Section 102(2) Code of Criminal Procedure is that the Officer seizing the account or attaching the account subordinate to the Officer in-charge of the Police Station has to forthwith report the seizure or attachment to his superior i.e. to the Officer In-charge of the Police Station. There is nothing on record to show that the report was either submitted to the superior or to the Magistrate having jurisdiction.

11. As regards the requirement of sub-Section 3 of section 102 of Code of Criminal Procedure is concerned, nothing is placed on record by the State to show that the Investigating Officer has furnished the information regarding the seizure of attachment of the accounts to the Magistrate, who is having jurisdiction. Moreover, before freezing of the account, no notice was issued to the present applicant. As observed by this Court, in the case of ***Dr. Shashikant D. Karnik referred (supra),*** that before issuing orders of stopping the operation of account, notice is required to be given to the petitioner. When the attachment order is bound to effect adversely and seriously to the holder of the account, then it was obligatory and necessary for the police to give him notice before doing attaching the accounts.

12. In the case in hand also, no notice was issued to the present applicant, in case the police apprehended that such a person like petitioner would, after receiving the notice, withdraw all the amount, they could have given notice to him and attached the accounts simultaneously. No such steps have been taken in this regard. Therefore, there is substance in the submission that entire order is totally illegal and perverse. Moreover, in the light of the observation of this Court, while releasing the present applicant on bail that there is no record that the applicant has received the amount of Rs. 13,22,990/-. the account statement shows that he has only received the amount of Rs. 60,000/- and odd, and there is nothing on record to show that the said amount was received by the applicant from the amount paid by the informant.

In view of the above, I pass following order:

a) Criminal application deserves is allowed.

b) The investigating officer is directed to de-freeze and release the bank account of the applicant.

Criminal application is disposed of.

JUDGE

Signed By:RAJESH KRUSHNARAO NANDURKAR

Signing Date:04.08.2023 18:34

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