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

CRIMINAL APPLICATION (APL) NO.864/2023
Balraj s/o Adkuji Jumnake .Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. M. Deo, Advocate for applicant.
Mr. A. R. Chutke, A.P.P. for non applicant – State.

CORAM : ANIL L. PANSARE, J.
DATE : 31.08.2023

Heard.

The challenge is to the order dated 17.05.2023 passed by learned Additional Sessions Judge, Gadchiroli in Criminal Revision No.25/2022 as also to the order dated 13.10.2022 passed by learned Chief Judicial Magistrate, Gadchiroli. The applicant had filed application before the learned Magistrate for defreezing his account. His application came to be allowed in the following terms:

"1) Application Exh 421 is allowed.
2] Five bank accounts mentioned in the application are directed to be released from seizure till the final disposal of the trial subject to the condition that accused shall furnish a bank guarantee of Rs.15,00,000/- of nationalized bank (In words, Rs. Fifteen Lacs) to secure his liability in the matter, if it is ultimately fixed by the court or the departmental authority.
3] The bank guarantee so furnished shall be renewed by the applicant form time to time till final disposal of the trial and any failure on his part to do so shall result in revival of seizure order.
4] The bank guarantee shall be furnished before this Court.

5] Inform the banks about the order after furnishing the bank guarantee of above mentioned amount."

The applicant, being aggrieved by the condition incorporated in operative clause (2) directing him to furnish the bank guarantee of Rs.15,00,000/-, has challenged the order before the revisional Court, which came to be dismissed. Learned counsel for the applicant submits that the applicant is being tried for the offence punishable under Sections 406, 420, 465, 468, 471 and 409 of the Indian Penal Code, 1860. The Magistrate has no power to fix the monetary liability in the proceedings where the applicant is being tried for the aforesaid offences. As regards the departmental authority, the learned counsel submits that the department has not yet fixed the liability and, even if fixed, the department has ample means to recover the liability.

The learned A.P.P.. on the other hand, submits that the Magistrate is fully justified in imposing condition, the application filed by the applicant before the Magistrate having been filed under Section 451 of the Criminal Procedure Code, 1973. Thus it is suggested that the Magistrate may release the property upon certain conditions in terms of Section 451 of the Code. He submits that the amount involved in the present case is about Rs.3,00,00,000/-. The applicant was working as Junior Accounts Officer, Zilla Parishad, Gadchiroli. Out of the misappropriated amount, an amount of Rs.28,00,000/- has been received by the applicant.

I have given thoughtful consideration to the submissions made by the learned counsel for the applicant. I find substance in the contentions put forth by the counsel appearing for the applicant. Once the Magistrate has arrived at a conclusion that the bank account should be defreezed, there is absolutely no reason why the Magistrate should direct security in the form of furnishing bank guarantee that too without giving sufficient time to the applicant to furnish bank guarantee after defreezing the account. In other words, the order indicates that the accounts will be defreezed subject to furnishing bank guarantee of Rs.15,00,000/-. It will be difficult for the applicant to furnish bank guarantee without the accounts having been defreezed.

Be that as it may, the condition of furnishing the bank guarantee is indeed onerous. Learned A.P.P. failed to point out any provision of law by which the learned Magistrate is empowered to fix the monetary liability in the case where the persons like the applicant are tried for the offence committed under the provisions of the IPC. That apart, the applicant is a Government servant. In a given case, his property including the GPF account, salary account, pension accounts, etc. can be attached as and when such liability is fixed.

Both the courts below have not considered these aspects, which resulted into passing of the perverse order, which requires correction. Hence, following order is passed.

ORDER

(i) The application is allowed.

(ii) Clause (2) of operative order passed by learned Magistrate in R.C.C.No.116/2020 on 13.10.2022 stands modified as under:

> (2) Five bank accounts mentioned in the application are directed to be released from seizure.

Needless to say that the consequential conditions imposed under operative clauses (3) to (5) would automatically become redundant.

(iii) The Magistrate is, however, at liberty to pass appropriate order pending trial in respect of the bank accounts, if contingency so arises.

The application is disposed of in the above terms.

(Anil L. Pansare, J.)

Kahale