IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.611 OF 2022

PETITIONERS : 1 Mrs. Snehal W/o Prafulla Wagh, Aged about 59 years, Occ.: Retired,

2 Mr. Yash S/o. Prafulla Wagh, aged about 19 years, Occ.: Student,

3 Mr. Jay S/o. Prafulla Wagh, aged about 19 years, Occ.: Student,

All 1 to 3, R/o.81 Basoli Apartment, 201, Near Mahalakxmi Temple, Dharampeth Society, Fifth Layout, Jaiprakash Nagar, Khamla, Nagpur

..**VERSUS**..

RESPONDENTS : 1 State of Maharashtra through Police Station Ballarshah, Chandrapur

2 State of Maharashtra through Economic Offences Wing, Chandrapur Police, Chandrapur.

Mr A. A. Naik, Adv. alongwith Mr M. Deo, Advocate for the Petitioner.
Ms M. H. Deshmukh, Addl. P. P. for the Respondent Nos.1 and 2.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATE : 15th FEBRUARY, 2023.

ORAL JUDGMENT : (PER : VINAY JOSHI, J.)

. **Rule**. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.

2. A crime has been registered *vide* CR No.1168 of 2021 with Ballarshah Police Station, District Chandrapur, for the offence punishable under Sections 420, 409, 406, 465, 466, 467, 468 and 471 read with Section 34 of the Indian Penal Code, 1860, against the husband of Petitioner No.1 (Petitioner) namely Prafulla Wagh, who was serving as a Divisional Manager with Forest Department.

3. The allegation is about misappropriation of huge amount. During investigation, Police took house search in which seized/freeze Petitioner's Thirteen Fixed Deposit Accounts as detailed in Annexure - C (Page 43) to the petition, which reads as below :

"The details of the Fixed Deposit Accounts Receipts of the petitioners which are frozen by the investigating agency-

Sr. No.	*Particular*	*Date of Deposit*	*Amount*
1)	*FD A/C. No.34109 of The Dharampeth Mahila Multi State Co-Op. Society Ltd., Nagpur*	*23/11/2017*	*Rs. 18,890/-*
2)	*FD A/C. No. 34104 of The Dharampeth Mahila Multi State Co-Op. Society Ltd., Nagpur*	*23/11/2017*	*Rs. 18,900/-*
3)	*FD A/C. No. 34108 of The Dharampeth Mahila Multi State Co-Op. Society Ltd., Nagpur*	*23/11/2017*	*Rs. 19,680/-*
4)	*FD A/C. No. 34103 of The Dharampeth Mahila Multi State Co-Op. Society Ltd., Nagpur*	*21/12/2019*	*Rs. 19,764/-*
5)	*FD A/C. No. 34111 of The Dharampeth Mahila Multi State Co-Op. Society Ltd., Nagpur*	*23/11/2017*	*Rs. 19,480/-*
6)	*FD A/C. No. 34110 of The Dharampeth Mahila Multi State Co-Op. Society Ltd., Nagpur*	*23/11/2017*	*Rs. 19,760/-*
7)	*FD A/C. No. 34101 of The Dharampeth Mahila Multi State Co-Op. Society Ltd., Nagpur*	*23/11/2017*	*Rs. 18,950/-*
8)	*FD A/C. No. 34102 of The Dharampeth Mahila Multi State Co-Op. Society Ltd., Nagpur*	*09/09/2019*	*Rs. 21,291/-*
9)	*FD A/C. No. 24214000003980 of Indian Overseas Bank, Pande Layout, Nagpur*	*07/10/2020*	*Rs. 5,00,000/-*

10)	*FD A/C. No. 24214000003981 of Indian Overseas Bank, Pande Layout, Nagpur*	*07/10/2020*	*Rs. 5,00,000/-*
11)	*FD A/C. No. 24214000003982 of Indian Overseas Bank, Pande Layout, Nagpur*	*07/10/2020*	*Rs. 5,00,000/-*
12)	*FD A/C. No. 24214000003983 of Indian Overseas Bank, Pande Layout, Nagpur*	*07/10/2020*	*Rs. 5,00,000/-*
13)	*FD A/C. No. 24214000003984 of Indian Overseas Bank, Pande Layout, Nagpur*	*07/10/2020*	*Rs. 5,00,000/-*
	Total		*Rs.26,56,715/-"*

4. Being aggrieved by the said action of seizure/freezing of Fixed Deposit Accounts, Petitioner has approached to this Court under Section 226 of the Constitution of India. Petitioner is a wife of Prafulla against whom, crime has been registered.

5. Seizure has been challenged on the ground that the seized amount has no concern with accused, as it is Petitioner's own earned investment. The Petitioner was serving as a physiotherapist in Government Medical College, Nagpur, and retired by superannuation in the year 2021. It is

the Petitioner's contention that from her own earning, she has invested all amounts, which has no concern either with her husband or related crime. It is her contention that as regards to Fixed Deposit amounts, which are at Serial No.1 to 8 are concerned, they are ranging below 20,000/- each which is out of her own savings. The said amount has been invested in Fixed Deposit Accounts time to time much earlier during the year 2017. As regards to remaining Five Fixed Deposits of Rs.5,00,000/- each invested on 07.10.2020, she has explanation that during passage of time, she has invested the amount in Systematic Investment Plan (SIP) and the same is received after liquidating her investments. In short, it is the Petitioner's contention that she has independent source of income, and therefore, the action of freezing Fixed Deposit Accounts is wholly erroneous.

6. In order to substantiate said contention, Petitioner has produced several documents majorly consisting of Bank Accounts. The Petitioner has initially invested the amount through mutual fund agency namely Khasnis Prime Wealth Pvt. Ltd. and then switched over to the another agency

namely N. J. India Investment Pvt. Ltd. The Petitioner has produced print out from both agents (page 89 to page 144) to satisfy her investment in SIP in Mutual Funds. It reveals that on 10.08.2020, a sum of Rs.22,67,185/- has been received by Petitioner through N. J. India Investment Pvt. Ltd. We have been taken through the corresponding bank entry dated 13.08.2020 showing that in Petitioner's Axis Bank Account, said amount has been credited by N. J. India Investment Pvt. Ltd. either by RTGS or NEFT. Our attention has been attracted to the account extract to emphasis that it was a Petitioner's salary account with Axis Bank.

7. The Petitioner has transferred the amount of Rs.25,00,000/- to her husband on 30.09.2020 (Bank Entries Page 143), which her husband has invested in the Petitioner's name on 07.10.2020 as could be seen from the account extract of her husband (Page 146) with Indian Overseas Bank. *Prima facie*, the entire chain is complete which shows that the huge amount of Rs.25,00,000/- invested in Five Fixed Deposit Accounts was the Petitioner's investment. So

far as the rests amount are concerned, they are less than Rs.20,000/- and having regard to Petitioner's employment and salary of more than Rs.1,00,000/- per month, there is no necessitate to probe furthermore.

8. Petitioner has also produced her Income Tax Return right from past ten years to show that she was earning salaried income and at the time of retirement, her annual income was ranging more than Rs.12,00,000/-. The State has not denied about Petitioner's employment and salaried income. The State while resisting the petition raised certain objections out of which, it has been primly contended that the Petitioner has not explained the receipts from N. J. India Investment Pvt. Ltd. and S S Enterprises. So far as the receipts from N. J. India Investment Pvt. Ltd. is concerned, the documents which we referred above speak about the proper explanation. As regards to some receipts from S. S. Enterprises are concerned, the Petitioner in her rejoinder has explained that she had advanced a loan to the tune of Rs.24,00,000/- to S. S. Enterprises, which they did return. In support of said contention, she has produced bank extract

(Page 188) to show that she has advanced the amount by raising loan.

9. Besides that we do not see any valid reason to sustain the attachment. Though, it is argued that the Petitioner's husband was involved in deflection of huge amount, however, there should be a justification for seizure of Petitioner's private investments by showing the circumstances raising a suspicion about the source of income. The Petitioner has *prima facie* satisfied about the source of income, which is supported by documents. In the circumstances, the action of freezing Petitioner's Fixed Deposit Accounts does not stand to reason.

10. Though, the Petitioner has challenged the seizure of bank locker, she seeks liberty to approach to the Magistrate as and when occasion arises. In view of the said submission, we grant liberty as prayed and considered the Petitioner's urge to the extent of defreezing Fixed Deposit Accounts only.

11. In view of above, the petition is **allowed**. The Respondents are directed to defreeze and release the Fixed

Deposit Accounts shown in Annexure-C of the petition (referred in para 3).

12. Rule is made absolute in above terms.

(VALMIKI SA MENEZES, J.) **(VINAY JOSHI, J.)**

TAMBE