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

CRIMINAL WRIT PETITION (WP) NO.857 OF 2022

M/s. Durgashakti Foods Private Limited
through its Director Shri Shashikant S/o.
Fakirchand Sureka,
Aged : 51 Yrs., Occ. Businessmen
R/o. Building No.1, Sureka Oil Mill,
Jagdamba Road, Jalalpura, Khamgaon,
Tah. & Dist. Khamgaon …. **PETITIONER**

// **VERSUS** //

1.State of Maharashtra,
Through Police Station Officer,
Shivaji Nagar Police Station,
Buldhana, Tah. & Distt. Buldhana

2. Economic Offence Wings,
through Deputy Commissioner,
Buldhana …. **RESPONDENTS**

Shri C. S. Dharmadhikari, Advocate for the petitioner
Shri S. A. Ashirgade, APP for the respondents

**CORAM : G. A. SANAP, J.
DATED : 25th JANUARY, 2023**

ORAL JUDGMENT :

1) Heard.

2) **RULE**. Rule made returnable forthwith. Heard finally by consent of learned Advocates for the parties.

3) By this writ petition, the petitioner-company has questioned the correctness of the order dated 04.06.2022, in Criminal Revision Case No. 20 of 2022, passed by the learned Additional Sessions Judge, Khamgaon, Distt. Buldhana, whereby the learned Judge was pleased to reject the revision application and confirm the order dated 28.02.2022 passed by the learned Judicial Magistrate First Class, Khamgaon. Learned Magistrate was pleased to reject the application made by the petitioner-company for de-freezing the account of the company with UCO Bank of Akola bearing No. 06990510000014.

4) The Assistant Sales Tax Officer, Khamgaon attached to GST office, Khamgaon lodged a complaint against Shri Shashikant S/o. Fakirchand Sureka, the Director of petitioner-company for commission of offences under Sections 406, 409, 420 and 506 of the Indian Penal Code and Sections 132(1)(d) and 132(2) of the Maharashtra Goods and service Tax Act, 2017 (For short "GST Act"). On the basis of the report the Economic Offence Wings, Buldhan registered the crime bearing No. 677 of 2021. The main allegation was that monthly returns required to be submitted under the GST Act were not submitted within time for the period mentioned in the report. The investigating officer in the investigation freezed the Bank account of the company. The petitioner, therefore, made an application for de-freezing the account. The said application was opposed by the prosecution. Learned Magistrate rejected the application mainly on the ground that at that point of time the investigation was at preliminary stage. Similarly, the learned Magistrate took into consideration the serious nature of the offences alleged to have been committed by the Executive Director of the petitioner company. In the revision against this order passed by the learned Magistrate, the learned Additional Sessions Judge was required to examine the legality and correctness of the order within the parameters of the law and also by keeping in mind the facts stated in the application. Learned Additional Sessions Judge, as can be seen from the impugned order, was inclined to reject the revision application on the ground that the petitioner-company could have applied for de-freezing of the account in an appeal filed by the company before the GST Appellate Authority.

5) Learned Advocate for the petitioner took me through the order and submitted that this is the sole ground for rejecting the revision application. It is submitted that the learned Additional Sessions Judge has not decided the revision application on its merit. Perusal of the order would show that the revision was rejected on the ground that the petitioner ought to have moved the application before the Appellate Authority for de-freezing the account. It is further observed in the order that the petitioner ought to have moved separate application before the GST Appellate Authority and not before the trial Court. In my view, this observation is out of the context. The application filed by the petitioner-company for de-freezing the account was not opposed at any time by the prosecution on this ground. Similarly, the application was not rejected by the Magistrate on this ground. Learned Magistrate found the application otherwise maintainable. Learned Magistrate was not inclined to grant application on the ground that the investigation is at a nascent stage and offence alleged to have been committed is serious offence. In my view, therefore, the order passed by the learned Additional Sessions Judge, Kahamgaon suffers from non application of the provisions of law and ultimately the non-application of mind to the issue involved in the matter. Therefore, this order is required to be set aside. Accordingly, the petition is allowed.

6) The order passed by the learned Additional Sessions Judge dated 04.06.2022 is set aside. The matter is remitted to the learned Additional Sessions Judge by restoring the revision application for the purpose of deciding it afresh, in accordance with law.

7) Learned Additional Sessions Judge, considering the time consumed in this litigation shall dispose of the same within one month from the date of the receipt of the copy of the order.

8) Rule made absolute in the above terms.

(G. A. SANAP, J.)

Namrata