IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2023

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

<u>Crl.O.P.No.24380 of 2021</u>

Saurabh Rathore ... Petitioner

/vs/

1.The Inspector of Police,
Central Crime Branch,
Bank Fraud Wing Team – 12,
Commissioner Office Building,
II Floor, EVK Sampath Road, Vepery,
Chennai 600 007.

2.The Branch Manager,
IDFC First Bank,
No.312, D.N.Road,
Fort Branch,
Mumbai,
Maharashtra 400 001.

3.M/s.Dharma Karma Company,
Rep. by its Managing Partner,
Bharath Sethia
(South Region of India),
No.64/20, Tulsi Kripa,
Avadi Srinivasan Road,
Choolai, Chennai 600 112. ...
Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to direct to de-freeze Account No.10008386694 in IDFC First Bank, Fort Branch, Mumbai in the name of 'Gobble Me Good' with immediate effect and direct the first respondent to not take any steps to freeze Account No.10008386694 in IDFC First Bank, Fort Branch, Mumbai based on the complaint CCB-I Cr.No.109/2020 except in due compliance of Section 102 of the Cr.P.C.

For Petitioner	...	Mr.O.Solaiappan
For Respondents	...	Mr.A.Gopinath, Govt. Advocate (Crl.Side) for R1 Mr.Kalph V.Manohar for R3

ORDER

This Criminal Original Petition has been filed to direct to de-freeze Account No.10008386694 in IDFC First Bank, Fort Branch, Mumbai in the name of 'Gobble Me Good' with immediate effect and direct the first respondent not to take any steps to freeze Account No.10008386694 in IDFC First Bank, Fort Branch, Mumbai based on the complaint in CCB-I Cr.No.109/2020 except in due compliance of Section 102 of the Cr.P.C.

2. Heard the learned counsels for the petitioner and the third respondent and the learned Government Advocate (Crl.Side) appearing for the first respondent.

3. The Managing Partner of the third respondent by name Bharath Sethia has lodged a complaint on 19.09.2019 against the petitioner for the offence of cheating by alleging that the petitioner had demanded a sum of Rs.95,58,000/- in order to allot Franchise for his Company by name Gooble Me Good for the entire South India and accordingly, the said sum was paid to the petitioner through RTGS to IDFC First Bank Account No.10008386694. As agreed, the Franchise was not allotted and there occurred certain problems. A sum of Rs.50,00,000/- was returned to the third respondent after several demands. However the remaining sum of Rs.45,58,000/- was not paid. The third respondent has alleged criminal intention on the part of the petitioner for retaining the said sum. During the course of the investigation, the said Bank Account of the petitioner's Company held with the IDFC First Bank, Mumbai Branch bearing Account No.10008386694 was freezed. Now the petitioner has filed this petition seeking to defreeze the said account.

4. The learned counsel for the petitioner submitted that the transaction between the petitioner and the third respondent is a business transaction and the said sum of Rs.45,58,000/- is said to be the due owed by the petitioner. Instead of filing civil suit for recovery of money, the third respondent has given a criminal colour for a civil cause of action; hence the account should be defreezed and the petitioner should be allowed to operate the account without any hurdles. The learned counsel for the petitioner further submitted that the disputed amount even as from the allegations made in the FIR is only Rs.44,00,000/- and not Rs.45,58,000/-

5. The learned Government Advocate (Crl.Side) submitted that after receiving the report from the Central Crime Branch, Bank Fraud Investigation Team, the matter was entrusted to Bank Fraud Investigation and only subsequent to that, the petitioner's account got freezed; the petitioner is not cooperating for the investigation and he is absconding; the criminal proceeds has not yet been recovered from the accused; despite the petitioner had collected money in the guise of GST, he has not paid any GST; hence the petition should be dismissed. In support of his contention, he relied on the order of this Court dated ***18.02.2016 in Crl.O.P.Nos.10260 to 10262 of 2014.*** The relevant paragraphs are extracted hereunder:

"18. The learned Public Prosecutor also relied upon the decision reported in 2007 (1) CTC 39 (K.Mahendra versus State, rep. By the Sub Inspector of Police, CCB, Chennai) and submitted that if this Court comes to the conclusion that the proceedings are liable to be quashed, then the Manager of the Banks may be directed to keep the amount in fixed deposit while allowing the petitioners to operate their accounts. Para 7 is relevant and it is extracted as under:

> *"7. Under such circumstances, the procedure prescribed is violated. The order dated 23.6.2006 becomes non-est and further direction is necessary. Accordingly, the order dated 23.6.2006 issued by the State Bank of India under instructions by the respondent police is set aside. The Manager of the State Bank of India, Saligramam branch No.49, Arcot Road, Saligramam, Chennai 600 093 is directed to keep the amount in deposit under Fixed Deposit and is further directed that the petitioner should not be allowed to withdraw the same. However, the Manager may allow the petitioner to operate his account. In the mean time, the petitioner is at liberty to move the learned Magistrate for*

further appropriate relief, if so advised, in this regard. With this observation, the petition is closed."

30. Though the learned senior counsel would submit that this is not a corruption case and no misappropriate or disproportionate amount was lying in the accounts of the petitioners, taking note of the fact that the petitioners were alleged to have grabbed the property by forging the documents and the income being derived from such property being deposited in their bank accounts, I am of the view that while quashing the order freezing the bank account and permitting the petitioners to operate their bank accounts, it would be appropriate to direct the amount lying in the bank accounts of the petitioners as on date to be deposited in a fixed deposit till the merits of the case is decided."

6. The learned counsel for the third respondent has also submitted his arguments in the line of the submissions made by the learned Government Advocate (Crl.Side) for the first respondent.

7. On perusal of the records, it is seen that the account of the

Company by name 'Gooble Me Good' has been freezed in view of the complaint given by the third respondent by alleging that he was cheated by the petitioner who was the Managing Director of the said Company. Even as per the submission of the petitioner, the petitioner is residing at Canada. Since the petitioner is an accused, he ought to have co-operated for the investigation. Whatever may be the case, the records would show that the third respondent has paid a sum of Rs.95,58,000/- to the Petitioner's Bank Account bearing No.10008386694.

8. The main contention of the petitioner is that for a civil cause of action, a criminal colour has been given. The money was paid to the Company's account on the assurance given by the petitioner that he would allot the Franchise to the third respondent. But the said assurance was not honoured and subsequently the third respondent demanded his money back. The above transaction cannot be strictly called as a business transaction for the obvious reason that no business was commenced subsequent to the payment made by the third respondent. The criminal intention on the part of the petitioner can be found out only after a detailed investigation. However, no purpose is going to serve if the account of the petitioner is kept defreezed till then. The concern of the prosecution is that the crime proceeds is yet to be recovered and hence the amount should not be defreezed. In that case, I feel it is appropriate to transfer the amount lying in Account No.10008386694 to the credit of the criminal case and thereafter, the account can be allowed to be operated by the petitioner.

9. The petitioner further claimed that the said account could not be freezed once again without due process of law. Since the freezing of the account has already been done and whatever transactions that might by done by the petitioner would be subsequent to the complaint, further freezing might not be necessary. In case, for any reasons known to the first respondent if freezing of the account is once again needed, that can be done only after compliance of the mandatory procedure prescribed under Section 102 Cr.P.C.

10. With these observations, this Criminal Original Petition is allowed on the condition that the amount of Rs.28,64,694.52/- lying in the impugned Account No.10008386694 shall be transferred to the credit of the Crime No.109 of 2020 in Special Court for CCB & CBCID Metro Cases, Egmore, Chennai and thereafter, the said Court shall deposit the same in any of the Nationalized Bank in a Fixed Deposit (under re-investment plan) until further orders. The petitioner is at liberty to operate the Bank Account after the said process of transferring the above amount is done.

04.01.2023

Index: Yes/No
Internet: Yes/No
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To

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Bank Fraud Wing Team – 12,
Commissioner Office Building,
II Floor, EVK Sampath Road, Vepery,
Chennai 600 007.

2.The Branch Manager,
IDFC First Bank,
No.312, D.N.Road,
Fort Branch,
Mumbai,
Maharashtra 400 001.

3.The Public Prosecutor,
High Court, Madras.

R.N.MANJULA ,J.

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