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W.P.(MD)NO.28919 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.28919 of 2023 AND
W.M.P.(MD)No.24949 of 2023

K.Usharani

... Petitioner

Vs.

1. The Superintendent of Police,
O/o.the Superintendent of Police,
Sivagangai District.

2. The Inspector of Police,
Kalayarkovil police station,
Sivagangai District.

3. The Bank Manager,
State Bank of India,
ACB Kalayarkovil Branch,
Sivagangai District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned letter issued by the third respondent dated 21.11.2023 quash the same and consequently directing the third respondent bank to defreeze the petitioner's above Savings Account No.20377046265 and allow the petitioner to operate the same as usual by considering the petitioner's representation dated 28.11.2023 within the time stipulated by this Court.



For Petitioner : Mr.K.Sheenivasan
For R-1 & R-2 : Mr.A.Albert James,
Government Advocate.
For R-3 : Mr.C.Deepak

* * *

ORDER

Heard both sides.

2. The petitioner is having a bank account with the third respondent. The third respondent informed the petitioner that on 21.11.2023 her account has been frozen as per the instruction received from the second respondent. That led to the filing of this writ petition.

3. When the matter was taken up for hearing, I called upon the learned Government Advocate to explain as to why the Inspector of Police, Kalayarkovil police station sent a communication to the third respondent for freezing the petitioner's bank account. The learned Government Advocate made available the communication sent in May 2022 and received by the third respondent on 23.05.2022 for freezing



the petitioner's bank account. It reads as follows:-

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From, Inspector of Police Kalaiyarkovil Police station Sivagangai	To, The Bank manager State Bank of India Vincert Tower Kalaiyarkovil.
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Sir,

Sub:	Request to freeze the account of Tmt.Usharani w/o. Kalairajan Kalimuthuservai Street Kalaiyarkovil given in details below due to involvement of illegal activities by his son Rajesh- Regarding
Ref:	Kalaiyarkovil Police station Cr.No- 48/2022 u/s 399,402 IPC 25(1A) Indian Arms Act & 20(b) (ii) (B) NDPS Act dt: 27.02.2022

It is submitted that above cited reference case was registered at Kalaiyarkovil police station on 27.02.2022 against one Rajesh age 22/2022 S/o.Kalirajan Kalimuthuservai Street Kalaiyarkovil, for the illicit possession of 1050 gm of ganja with weapon along with his associates and the said Rajesh was arrested and remanded to judicial custody.

It is Submitted that I am the investigation officer , and the investigation disclosed that a strong suspicion to believe that the deposit made by Usharani w/o. Kalairajan mother of Rajesh was connected under the sale proceed of the offence committed under the NDPS Act, by his son of the accountee.

Hence I request to freeze the below mentioned bank account of accused mother. As adherence to Sec 102(3) Crpc and sent the report to me with effect to the freeze of the account for an ward transmission to the court .

Sl.No	Name of the Account holder	Account Number	Bank Address
01.	Tmt.Usharani w/o. Kalairajan Kalimuthuservai Street Street Sivagangai District.	AC.No- 20377046265 CIF.No- 89151384662	D.No- 6283 Vincert Complex Thondi Road Kalaiyarkovil Sivagangai District IFSC- SBIN0016829



Investigation Officer
Inspector of Police
Kalaiyarkovil P.S,
Sivagangai (Dist)



4. Section 102 Cr.P.C. empowers the investigation officer to freeze the petitioner's bank account. Madras High Court in the decision reported in **2013 SCC OnLine Mad 2629 (T.Subbulakshmi V. Commissioner of Police)** had held as follows:-

“ 27.From the dictum laid down in the judgments relied on by the learned senior counsel for the petitioners it is clear that the bank account is a property within the meaning of Section 102 of Cr.P.C and sub-section (3) to Section 102 requires the reporting of seizure of the property to the concerned Magistrate forthwith, which is mandatory in nature. Moreover, the freezing of bank account is an act of the investigation and therefore, the duty is cast upon the Investigating Officer under Section 102(3) of Cr.P.C. to report the same to the Magistrate, since the freezure of the bank account prevents the person from operating the bank account pursuant to an investigation by the Police in a criminal case registered against him.



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If there is any violation in following the procedures under Section 102 of Cr.P.C., the freezing of the bank account cannot be legally sustained. Since in the case on hand the 2nd respondent-Police has not reported the freezing of the bank accounts of the petitioners herein to the concerned Magistrate forthwith, which is mandatory under Section 102(3) of Cr.P.C., the proceedings of the 2nd respondent-Police in freezing of the bank accounts of the petitioners herein are not legally sustainable.”

5. I wanted to know to Ms.Samayamuthu, SSI, Kalayarkovil police station who present in person to assist the learned Government Advocate. I wanted to know from them, if the intimation had been sent to the jurisdictional Judicial Magistrate immediately. Even though some time was given, they could not produce any such intimation. Therefore, I have to necessarily hold that freezing of the petitioner's bank account has to be removed.



4. There is yet another aspect of the matter. It is true

that the petitioner's son has been implicated in NDPS case.

The quantity of contraband is small. There is nothing on record to say that there is any connection between the petitioner and her son's alleged illegal activities. Unless the investigation officer satisfies himself that based on the materials, the amount deposited in the petition mentioned bank account is traceable to some crime, the investigation officer could not have called upon the bank to freeze the petitioner's bank account. In this case, the request made by the second respondent is not based on any material. Therefore, on these twin grounds, the impugned order is set aside. The third respondent will permit the petitioner to operate the petition-mentioned bank account. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

07.12.2023

NCS : Yes / No

Index : Yes / No

Internet : Yes/ No

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To:

1. The Superintendent of Police,
O/o.the Superintendent of Police,
Sivagangai District.
2. The Inspector of Police,
Kalayarkovil police station,
Sivagangai District.



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G.R.SWAMINATHAN,J.

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