

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

CRR 4511 of 2023
With
(CRAN 1 of 2023)

Anil Kumar Dey Sarkar
v/s.

The State of West Bengal

For the petitioner:	Mr. Sabir Ahmed, Mr. Brijesh Giri, Mr. S.Sarkar,
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For the State:	Ms. Rudradipta Nandy.,
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Heard on:	23-09-2024
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Judgment delivered on:	04-10-2024
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SUVRA GHOSH, J. :-

- 1) C.R.A.N. 1 of 2023 is an application for condonation of delay in filing the revisional application.
- 2) Upon hearing learned counsels for the parties and good grounds being shown, the application is allowed. Delay in filing the revisional application is condoned.
- 3) C.R.A.N. 1 of 2023 is disposed of.
- 4) The petitioner has assailed the order passed by the learned Judge Bench-II, City Sessions Court, Calcutta in Special Case (ACB) no. 10 of 2019 on

28th March, 2023 turning down the prayer of the petitioner for de-freezing the twelve fixed deposit accounts with the State Bank of India, Ruby Park Branch Calcutta and Axis Bank Kasba Branch Calcutta frozen by Anti-Corruption Branch Police.

- 5) At the outset, learned counsel for the petitioner has challenged the legality of such freezing on the ground that it was not done in accordance with section 18A of The Prevention of Corruption Act, 1988. Learned counsel has taken this Court to the ordinance no. XXXVIII of 1944 which applies to attachment of property involved in any scheduled offence. According to the learned counsel, section 102 of the Code of Criminal Procedure which deals with the power of police officer to seize certain property is not applicable in a case under The Prevention of Corruption Act since the Act is a complete Code by itself. Learned counsel has placed reliance on the authorities in *Ratan Babulal Lath v/s. The State of Karnataka* in Criminal Appeal no. 949 of 2021 of the Hon'ble Supreme Court and *Abha Dubey v/s State of Bihar and others* reported in 2023 O Supreme (Pat) 923 of the High Court of Judicature at Patna in support of his contention.
- 6) On merits, the petitioner has produced documents including bank statements to substantiate that the amount deposited in the various accounts are his earned/acquired money, some of which have gradually increased due to their maturity on completion of the term of fixed deposit.
- 7) In vehemently opposing the prayer of the petitioner, learned counsel for the State submits that the bank accounts have not been attached as yet and have only been seized and as such, section 18A of the Act of 1988 is

not applicable herein. The authority shall take necessary steps for attachment of the accounts under section 18A of the 1988 Act.

- 8) On merits, learned counsel has submitted that accumulation of unexplained cash and huge withdrawal and transfer being detected in the accounts of the petitioner, the accounts were frozen under section 102 of the Code of Criminal Procedure. The two fixed deposit accounts of the petitioner opened in 2017 with the State Bank of India of Rs. 5, 00, 000/- each pertain to the compensation received by him upon acquisition of his property by the National Highways Authority of India and the opposite party has no objection to release the said fixed deposit accounts.
- 9) Learned counsel has relied upon the authority in R Sampath v/s. State represented by Inspector of Police, CBI /ACB/Chennai in CrI. R.C. no. 795 of 2021 in support of his contention.
- 10) I have considered the rival contention of the parties and material on record.
- 11) Since challenge to the legality of the seizure/freezing strikes at the root of the case, this issue is taken up for consideration before dealing with the merits of the case.
- 12) Section 18A of The Prevention of Corruption Act, 1988 deals with attachment and forfeiture of property under the said Act. It shall be useful to reproduce section 18A of the Act:-

“18A. Provisions of Criminal Law Amendment Ordinance, 1944 to apply to attachment under this Act.- (1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002 (15 of 2003), the provisions of the

Criminal Law Amendment Ordinance, 1944 (ord. 38 of 1944) shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act.”

- 13) In other words, an attachment/freezing of the bank accounts in connection with an offence under the 1988 Act is to be made in accordance with section 18A of the Act. Admittedly the bank accounts of the petitioner have been frozen by the opposite party in exercise of power under section 102 of the Code of Criminal Procedure.
- 14) Diverse views have been taken by the High Courts of Madras and Patna with regard to applicability of section 102 of the Code in seizure and freezing of bank accounts in a criminal case registered under the 1988 Act. The Madras High Court has held in favour of such application whereas the Patna High Court has held that such seizure and freezing can be made only under section 18A of the Act and not under section 102 of the Code.
- 15) The Hon’ble Supreme Court, in the authority in Ratan Babulal (supra) has examined the question whether attachment of bank accounts is sustainable in exercise of powers under section 102 of the Code. The Hon’ble Court has held that it is not possible to sustain freezing of the bank accounts taking recourse to section 102 of the Code as The Prevention of Corruption Act is a Code by itself. The freezing was accordingly set aside by the Hon’ble Court leaving open to the respondents/ State to take such recourse in law as may be permissible.

- 16) Section 18A of the Act envisages that attachment, administration of attached property, execution of order of attachment and confiscation of money or property procured by means of an offence under the Act shall be governed by section 18A. Since admittedly the bank accounts of the petitioner were frozen by the opposite party by invoking section 102 of the Code and not by procedure under section 18A of the Act, the said freezing cannot be sustained.
- 17) In view of the fact that the bank accounts in question were not frozen in accordance with law, this Court does not find it necessary to deal with the prayer for de-freezing the same and objection raised thereto on merits.
- 18) Accordingly, freezing of the bank accounts of the petitioner is set aside.
- 19) The opposite party is directed to de-freeze the said accounts within seven days from date.
- 20) However, the opposite party is at liberty to take recourse to law with regard to such freezing as and when occasion arises.
- 21) The revision application being C.R.R. 4511 of 2023 is allowed.
- 22) Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)