

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1661 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2024.01.30
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Reshma Ganji

...Petitioner

Versus

State of Maharashtra & ors.

...Respondents

Mr. Yashpal Tahkur, a/w Kaustubh Gupte, for the Petitioner.

Mr. S. R. Aagarkar, APP for the State/Respondent.

Mr. Sankalp Vichare, i/b Ashish Dubey, for Respondent

No.2.

PSI Bharat Koyal, Gavdevi Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED: 29th JANUARY, 2024

ORDER:-

1. Heard the learned Counsel for the petitioner, the learned APP for the State and the learned Counsel for respondent No.2.

2. This petition under Article 226 of the Constitution of India calls in question the legality, propriety and correctness of an order passed by the learned Metropolitan Magistrate, 40th Court, Girgaon, dated 11th April, 2023, on an application preferred by the petitioner – accused to de-freeze the accounts whereby the learned Magistrate while ordering the de-freezing of the four accounts directed the petitioner to furnish bank guarantee of Rs.2,80,00,000/-. In addition, the petitioner has been directed to furnish indemnity bond of Rs.2,80,00,000/-.

3. An affidavit-in-reply is filed on behalf of the State. The Investigating Officer has categorically asserted that during the course of investigation the complicity of the accused/petitioner for the offences punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") could not be found. Eventually, the investigating agency has filed 'C' Summary Report. It is awaiting the decision of the learned Magistrate.

4. In the face of the aforesaid development and the fact that the learned Magistrate categorically recorded that there was non-compliance of the provisions contained in Section 102 of the Code of Criminal Procedure, 1973 ("the Code"), the learned Magistrate could not have imposed the condition of furnishing a bank guarantee to the tune of Rs.2,80,00,000/-. In any event, the learned Magistrate has imposed the condition of furnishing an indemnity bond. Since the investigating agency has filed 'C' Summary, there is no propriety in insisting for furnishing a bank guarantee, as the amount freezed can not be said bear the character of the property involved in the offence.

5. The learned Counsel for respondent No.2 submitted that respondent No.2 has filed a protest petition. Needless to clarify that, in the event, the learned Magistrate declines to accept the

‘C’ Summary and passes an appropriate order in accordance with law, the petitioner – accused shall face the consequences thereof.

6. With the aforesaid clarification the petition stands allowed in terms of prayer clause (a).

7. The impugned order to the extent it directs the petitioner to furnish bank guarantee in the sum of Rs.2,80,00,000/- stands quashed and set aside. Rest of the order stands affirmed.

8. At this stage, the learned Counsel for the petitioner, submits that the investigating agency had in fact freezed seven accounts of the petitioner and, therefore, the investigating agency be directed to de-freeze all seven bank accounts. Attention of the Court is invited to the affidavit-in-reply filed on behalf of the State.

9. The petitioner had, in fact, applied for de-freezing only four accounts. The petitioner would be at liberty to move the learned Magistrate to de-freeze the rest of the three accounts as well.

10. Petition stands disposed.

[N. J. JAMADAR, J.]