HEMANT CHANDERSEN SHIV
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 6099 OF 2021

1. Kapil Sudhir Vhora
Age- 38 years, Occ: Service,
R/o. Flat No. 9, Anandi Apartment,
Baramati, Tal- Baramati
district- Pune.

2. Ashwini balasaheb Ingale
Age- 29 years, Occu- Service,
R/at-Baramati, Tal- baramati,
District- Pune

3. Pratiksha Pramod Virkar
Age-24 years, Occu- Service
R/at- A-6, Bhigwan Road , MSEB Colony
Baramati, Tal- Baramati, District- Pune

4. Akash Swaminath Kambale
Age-28 Years, Occu- Service,
R/at Asu, Tal- Phaltan,
District- Satara .. Petitioners

Vs.

The State of Maharashtra
At the instance of C.R.
No. 495 of 2021 at Baramati City
Police Station .. Respondent

Mr. Rupesh A. Zade for Petitioners.
Ms. Mahalakshmi Ganpathi APP for State.

CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.

RESERVED ON : 21st DECEMBER, 2023.

PRONOUNCE ON : 8th JANUARY, 2024.

JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

1) Present Petition is filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (Cr.P.C.) seeking to quash the FIR bearing C.R.No.495 of 2021, registered with *Baramati* City Police Station for the offences punishable under Sections 188, 409, 420 read with 34 of Indian Penal Code, 1860.

2) Record of the Petition shows that, notice was issued on dated 27th April, 2022 and the Respondent was directed not to filed charge-sheet against the Petitioners. The said interim order has been continued till date.

3) Heard Mr. Rupesh A. Zade learned counsel for Petitioners and Ms. Mahalakshmi Ganpathi learned APP for State.

3.1) Rule. The Rule is made returnable forthwith and by consent of the parties the matter is taken up for final hearing.

4) The impugned F.I.R. has been registered on the report of Shubhash Shingare, Police Inspector attached to Matunga Police Station, Mumbai, wherein it is narrated that, six bank accounts were freezed in connection with Crime No.324 of 2020, under Sections 420, 294-A, 114 read with 34 of Indian Penal Code, under Sections 7 (3), 9 (1) of the Lotteries (Regulation) Act, under Sections 4 (1) (a) and 5 of the

Maharashtra Prevention of Gambling Act and under Section 66D of the Information Technology Act, registered at Matunga Police Station against one Sudhir Dhananjay Sarode, Director, SDS Online Broking and Auctioning Center (OPC) Pvt. Ltd. One of the six accounts is with Axis Bank wherein Rs.2,67,99,671.11/- were balance. The Application for defreezing that account was rejected by the concerned Metropolitan Magistrate and revision filed against that order was pending. On 30th July, 2021 Petitioner No.1, the branch Manager of Axis Bank at Baramati, informed the Police that, the aforesaid Axis Bank account has been defreezed on the application of Sudhir Sarode and an amount of Rs.1,26,88,248.00/- has been transferred to the GST department to save the fine amount to be imposed by that department. Thereafter, the First Informant held the necessary inquiry. It revealed that, on the Application sent by accused Sudhir Sarode, the Petitioners defreezed the aforesaid bank account and helped to transfer the huge amount to save the fine. Thus, the Petitioners and accused Sudhir Sarode have committed this crime in furtherance of their common intention.

4.1) However, according to the Petitioners, they are innocent. Hence, this Petition.

5) Learned Advocate for the Petitioner submitted that, the Petitioners acted in good faith upon the Application and instructions by the main accused Sudhir Sarode that, the Court had directed to defreeze

his said account and to transfer the amount to the GST department. In other words, the Petitioners are not concerned with the alleged fraud committed by Sudhir Sarode. The Petitioners are not benefited out of this offences. As such, the offence punishable Under Sections 188, 409, 420 and 34 of the Indian Penal Code are not made out against the Petitioners. However, they have been falsely implicated in this crime.

6) Per contra learned APP submitted that, considering the text of the F.I.R., there is sufficient material against the Petitioners that they and the main accused Sudhir Sarode are equally responsible for the present crime. As such, there is prima facie case against the Petitioners.

7) Perusal of the FIR clearly indicates that, the subject Axis Bank account was freezed and the prayer of accused Sudhir Sarode to defreeze that account was rejected by the Metropolitan Magistrate on 7^{th} July, 2021. The Axix Bank was aware of this rejection. Copy of that Order was also given to the Advocate of the bank, who was present in the concerned Court proceedings. Yet, the Petitioners did not consider the Order of the rejection dated 7^{th} July, 2021 and within a short period of said rejection transferred the money from that account. Even though the Petitioners claimed that, the accused Sudhir Sarode has falsely stated in the Application that, the concerned Court has permitted to pay the Government dues, they have not informed as to what efforts they made to verify this fact. In fact, no efforts were made by the Petitioners to verify

the said fact. That apart, the Order dated 7th July 2021 was also annexed with the Application seeking to transfer the amount, however, the Petitioners have not explained as to why they did not check the said Order. It is surprising that the Application for transfer of the amount was sent through a messenger of the main accused. Nevertheless, the Petitioners did not pay any attention to this aspect. Thus, the F.I.R. clearly indicates that, the Petitioners knowingly join hands with the main accused Sudhir Sarode and transferred Rs.1,26,88,248.00/- to the GST department, illegally. This the Petitioners intentionally did to help the accused Sudhir Sarode to save him from the clutches of law and to relieve him from the fine amount, that would have been charged by the GST department. This is very undeserving favour to a person who was already an accused in the serious crime of cheating. As such there is no substance in the claim of the Petitioners that they acted bonafidely in this case.

8) It is equally significant to note that, the earlier crime No.324 of 2020 was registered for the act of cheating common people and causing economic loss to the Government. As such, the money which has been illegally transferred by the Petitioners was 'Public Money". It was freezed in relation to the liability arising out of the said crime. However, by transferring the money, the Petitioners gave undue advantage to the main accused Sudhir Sarode and put the victims of the earlier crime to a monetary loss.

9) In view of the above discussion, there is strong *prima facie* case against the Petitioners of having committed the offences alleged in the impugned F.I.R., Such offences always shatter the confidence of the customers of private banks. As such, the offence is serious and needs thorough investigation. Thus, there is no substance in the Petition. Hence, the Petition is liable to be dismissed.

10) Criminal Writ Petition No. 6099 of 2021 is dismissed.

(SHYAM C. CHANDAK, J.) **(A. S. GADKARI, J.)**