**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.2895 OF 2024

Mukund Dalal
Flat 4, 4th Floor, Manavi Apartments
Ridge Road, Opposite Malabar
Hill Police Station,
Mumbai 400 006 ..Petitioner

vs.

1. Union of India
Through CBI, ACB,
Bandra Kurla Complex
Near MTNL Exchange
Bandra (E), Mumbai 400 098 ...

2. State of Maharashtra ...

3. Mr. Chandan Kumar
Official Liquidator,
Bombay High Court ... Respondents

**WITH
WRIT PETITION NO.2893 OF 2024**

Shyam B. Ghia
residing at Ghia Mansion,
18, Carmichael Road,
Mumbai 400 026 ... Petitioner

vs.

1. Union of India
Through CBI, ACB,
Bandra Kurla Complex
Near MTNL Exchange
Bandra (E), Mumbai 400 098 ...

2. State of Maharashtra ...

3. Mr. Chandan Kumar
Official Liquidator,
Bombay High Court ... Respondents

Mr. Aabad Ponda, Senior Counsel with Mr.Karan Kadam with Ms. Prerana Wagh and Mr.H. Singh i/b Crawford and Bayley & Co. for the Petitioner in both Petitions.
Mr. Kuldeep Patil with Muthu Kutti for the Respondent/CBI.
Mr. C. B. Mali A.P.P. for the Respondent-State.
Mr. Kushal Mor with Mr.Tanmay Karmarkar for Respondent No.3-Official Liquidator.

CORAM : SHYAM C. CHANDAK, J.

DATED : 24th SEPTEMBER, 2024

P. C. :

. Writ Petition No.2895 of 2024 challenges two separate Orders dated 4th September, 2023 passed in C.C.No.3064/Misc/2023 and C.C.No.3223/Misc/2023 by the 3rd Court of learned Additional Chief Metropolitan Magistrate, Esplanade, Mumbai and seeking for quashing and setting of the said Orders. Further, it prays to defreeze Bank Accounts No.06130100000915 and No.06130100010155 in the name of Petitioner Mukund Dalal. Both the accounts have been maintained with the Bank of Baroda, Walkeshwar Branch, Mumbai.

2) Writ Petition No.2893 of 2024 challenges an Order dated 4th September, 2023 passed in C.C.No.3063/Misc/2023 by the same 3rd Court of the learned Additional Chief Metropolitan Magistrate, Esplanade,

Mumbai and seeking for quashing and setting aside of the said Order. Further, it prays to defreeze Bank Account No.001010100049084 in the name of Petitioner Shyam B. Ghia. Said account is maintained with the Bank of India, Churchgate Branch, Mumbai.

3) The aforestated three bank accounts were freezed in connection with crime No. RC0262021A0003 registered with respondent No.1 under Sections 120B, 420 and 406 of the Indian Penal Code and under section 536 of the Companies Act, 1956, on the report of Deputy Official Liquidator, a representative of Respondent No.3. The Petitioners were arraigned as accused therein. After investigation, the Respondent No.1 filed a closure report in the crime as no offence was made out from the material collected in the course of investigation. Meanwhile, the Petitioners filed the aforesaid Misc. Applications seeking for defreezing their bank accounts. The Respondent No.1 gave no objection to the Applications. However, the first informant resisted the closure report by filing protest petition and also opposed the Misc. Applications. The learned Magistrate persuaded to reject the closure report and hence, directed for further investigation. Then the learned Magistrate rejected the Misc. Applications seeking for defreezing the bank accounts.

4) Heard learned Senior counsel Mr.Ponda for the Petitioners, learned Special P.P. Mr.Patil for Respondent No.1-CBI, learned A.P.P. Mr.Mali for Respondent No.2-State and learned counsel Mr. Mor for

Respondent No.3-Official Liquidator. Perused the record.

5) Rule. Rule made returnable forthwith. By consent of the parties, the Petitions are taken up for final hearing.

6) The main reason for rejection of the Misc. Applications is that, according to the learned Magistrate, the Petitioners seems to have committed the alleged offence. Therefore, it will not be proper to defreeze the accounts. The learned magistrate further noted that, as per the Order of this Court in Company Petition No.399 of 2013, all the properties and funds vests in the custody of the Official Liquidator and he is authorised to deal with the said accounts.

7) Learned Senior Counsel Mr.Ponda for the Petitioners submits that even after further investigation, the end result is same i.e., filing of the closure report under Section 169 of Cr.P.C. Learned Counsel Mr.Patil for Respondent No.1 submits that, despite thorough investigation, no offence is made out against the Petitioners, therefore, he has no objection for defreezing the said bank accounts or to direct the Respondent No.1 to instruct the banks concerned, to defreeze the accounts.

8) Learned Senior Counsel Mr.Ponda states that, presently the amount lying in aforesaid bank accounts is totalling to Rs.3,10,85,000/-, approximately; that, this amount was/is not the subject matter of the Company Petition No.399 of 2013; that, the Petitioners have already deposited in this Court more than Rs.2,70,00,000/- in the said Company

Petition; and that, the total amount of Rs.3,10,85,000/- is not received by the Petitioners on intentionally selling the plots of the Company under liquidation, for lesser than the market price.

9) Learned Counsel Mr. Mor for Respondent No.3 states that, the Official Liquidator was appointed in the year 2019, however, learned Counsel for Respondent No.3 could not inform as to whether the said amount of Rs.3,10,85,000/- is under any legal liability to be discharged by the said Company under liquidation or not.

10) In the backdrop, the Petitions deserves to be allowed. However, learned Counsel Mr.Mor raised an apprehension that, if in the future some crime is revealed as regards the amount of Rs.3,10,85,000/-, then it will be difficult for Respondent No.3 to discharge the liabilities of the Company. In this regard, learned Senior Counsel Mr.Ponda submitted that, said Accounts are not freezed by any Order of this Court. In case again there is direction for further investigation and it culminates into filing of charge sheet against the Petitioners, then the aforesaid bank accounts and the said amount of Rs.3,10,85,000/- may be subject matter of the Orders of the Court of the learned Metropolitan Magistrate, including return of the said amount of Rs.3,10,85,000/- to the same accounts. Said statement made by the learned Senior Counsel is accepted. The Petitions succeed, thus. Hence, following Order :-

(i) Petitions are partly allowed.

(ii) The impugned Orders dated 4th September 2023, passed by the 3rd Court of learned Additional Chief Metropolitan Magistrate, Esplanade, Mumbai in C.C.No.3064/Misc/2023, C.C.No.3223/Misc/2023 and C.C.No.3063/Misc/2023, are quashed and set aside.

(iii) Respondent No.1-CBI to intimate the concerned to defreeze the Bank Accounts No.06130100000915 and No.06130100010155 in the name of Petitioner-Mukund Dalal, maintained with the Bank of Baroda, Walkeshwar Branch, Mumbai and Bank Account No.001010100049084 in the name of Petitioner-Shyam B. Ghia, maintained with the Bank of India, Churchgate Branch, Mumbai.

(iv) The Petitioners shall not close the aforesaid bank accounts post its defreezing and, shall continue to operate the same for their banking need, until the logical conclusion of the liquidation proceedings.

(v) If there is again direction for further investigation and it culminates into filing of charge sheet against the Petitioners, then the aforesaid bank accounts and the said amount of Rs.3,10,85,000/- shall be subject to the Orders of the Court of the learned Metropolitan Magistrate concerned, including return of the said amount of Rs.3,10,85,000/- to the same accounts along with interest at such rate as will be directed by the said Court. The Petitioners shall submit an undertaking to that effect before the trial Court and shall keep its copy on the record of these Petitions.

(vi) Respondent No.3 is at liberty to place this Order in the Company Petition No.399 of 2013, if so advised, for information and the needful, if any.

(vii) Petitions stand disposed of.

(viii) Rule is disposed of in the aforesaid terms.

[SHYAM C. CHANDAK, J.]