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

CRIMINAL WRIT PETITION NO. 3144 OF 2024

Jitesh Amritlal Vakhariya
Age 45 years, Occ-Business,
Residing at: Room no. 13, Jetha Krupa
Building, Dr. S S. Rao Road,
Lalbaug, Mumbai 100 012.

...Petitioner
(Org. Complainant)

V/s.

- (1) The State of Maharashtra
(At the instance of L. T. Marg Police
Station, C.R. No. 202 of 2023).
- (2) Vinu Bhima Bhogesara
Aged: 40 years, Occ-Business,
Residing At: d/406, Gokul Park, Opp. Dmart,
Virar (West), District Palghar.
- (3) Hitendra Vimal Jain
Aged: 35 years, Occ-Business,
A/102, Gokul Township, Near Muljibhai
School, Virar West, Palghar.
- (4) Lalit Amritlal Vakhariya
Aged: 54 years, Occ-Business,
R/at: Flat No. 11/12. 2nd floor, Jalaram
Nagar No.3 V.B Lane, Ghatkopar (East).
- (5) Rajesh Ashok Karande
Age: 32 years, Occ-Business,
R/at: B/104, Shiv Sagar Apt. Building no. 51,
Tilak Nagar, Chembur, Mumbai- 400 089.
- (6) Ganraj Bhagat Singh Kunware
Age: 58 years, Occ-Business,
R/at: 103, Deepanjali Krishna Kamal CHS,
Sector 21, Nerul, Navi Mumbai.

- (7) Anand Narshi Patel
Age:57 years, Occ-Business,
R/at: Rajawadi Chittaranjan Society,
Room no. 1/2, Near Shakuntla Bhuvan,
Ghatkopar (East).
- (8) Aadhikrao Yeshwant Yewale
Age: 47, Occ-Business,
R/at: 1/1 Kisan Smruti, Juvekar Marg,
Bhandup (East), Mumbai- 400 042.
- (9) Imtiyaz S. Halli
Age: 42 years, Occ-Business,
R/at: Flat No. 106,
Behind Siddhart High School,
Tipanna Layout Bangalore,
North Bangalore.
- (10) Nitesh Ramesh Sawant
Age:40 years, Occ-Business,
R/at: A/17, Sangli Vaib hav CHS Road no 5,
Natwar Nagar, Jogeshwari (East),
Mumbai- 400 060.
- (11) Kintesh Laxmidas Mashru
Age: 50 years, Occ-Business,
R/at: 701, Neelyog Residency, Near Kanta
Apartment, Ghatkopar (East). ...Respondents
- Mr. Amin Solkar, with Ms. Taha, for the Petitioner.
 - Mr. C. D. Mali, A.P.P., for the Respondent-State.
 - Ms. Sejal Jain, for Respondent Nos. 2 & 3.
 - Mr. Mohammed Juned, for Respondent No. 4 to 11.
 - PSI Kalidas N. Dhaware, L.T.Marg, Police Station, Mumbai.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 26th August, 2024

PRONOUNCED ON : 10th September, 2024

JUDGMENT :

. Present Petition filed under Article 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973 seeks quashing and setting aside of impugned Order dated 12th July 2023 passed by 28th Court of learned Metropolitan Magistrate, Esplanade, Mumbai whereby Petitioner's Application bearing C.C. No.1518/MISC/2023 has been rejected. Further, the Petition seeks quashing and setting aside of the impugned Order dated 9th October, 2023 passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai, in Criminal Revision Application No. 705 of 2023 thereby confirming the impugned Order dated 12th July 2023. Lastly, it seeks direction to release an amount of Rs.65,00,000/- seized by Respondent No.1 Police Station.

2) Heard, learned counsel Mr. Solkar, for the Petitioner, learned A.P.P. Mr. Mali, for Respondent No.1-State, learned Advocate Ms. Jain for Respondent Nos.2 and 3 and learned Advocate Mr. Juned for Respondent Nos.4 to 11. Perused record.

3) Rule. Rule is made returnable forthwith. By consent, taken up for final disposal.

4) The facts giving rise to this Petition are that, on the

report dated 26th March, 2023 lodged by the Petitioner, Respondent No.1-L. T. Marg Police Station registered C.R. No.202 of 2023 under Section 409, 420 read with Section 34 of the Indian Penal Code, against Respondent Nos. 2 and 3. In the said report, it has been narrated that the Petitioner and his eight friends i.e., Respondent Nos. 4 to 11 were engaged in import and export of foodgrains etc. In March 2023, the Petitioner and Respondents Nos.4 to 11 purchased some goods from their agent Mr. Nagrecha, at Dubai. Mr. Nagrecha wanted the said goods payment, urgently. Therefore, the Petitioner and his eight friends collected total Rs.94,28,000/- to send it to Mr.Nagrecha.

5) On 18th March 2023, the informant contacted one Dhiraj Gada to send the collected amount to Dubai. Thereafter, Respondent Nos.6, 7 and 11 handed over the aforesaid amount to Dhiraj Gada to send it to Dubai. However, Dhiraj Gada introduced the Respondents Nos.2 and 3 and said that they are doing a business in the name of M/s.D.M. Angadia and told the Respondent Nos.6, 7 and 11 to deposit the said amount with M/s. Akash Kanti Angadia to further deposit with M/s. D.M. Angadia. Hence, the Respondent Nos.6, 7 and 11 deposited the amount with M/s.D.M. Angadia. However, the Respondent Nos. 2 and 3

misappropriated the aforesaid amount. During investigation, police arrested the Respondent Nos.2 and 3 and recovered total amount of Rs.65,00,000/- from them.

5.1) The Petitioner preferred C.C. No.1518/MISC/2023, seeking interim custody of said amount of Rs.65,00,000/-, enclosing an authorisation given by Respondent Nos.4 to 11. The investigation Officer gave his no objection to the Application. The learned APP and Respondent Nos.1 and 2 also filed their say to the Application. After hearing the parties, the learned Metropolitan Magistrate rejected said Application by the impugned Order dated 12th July 2023 for the reasons that, it was not adjudicated that the seized amount was legally owned by the Petitioner and his businessmen friends. Secondly that, as the transaction in question was in cash, it is not justifiable to return the said amount to the Petitioner.

5.2) The Petitioner challenged the said Order in Criminal Revision Application No.705 of 2023. The investigation Officer again gave his no objection. The learned Additional Sessions Judge, however, rejected the Revision by the impugned Order 9th October, 2023 for the reasons that, the Respondent Nos.2 and 3 were not party to the Application; that, the say of Investigation

Officer and the Respondent Nos.2 and 3 were of the same date; that, it is not clear as to whether the said Respondents were in custody or on bail on the date of filing their say (no objection); and that, the seized amount does not belong to the Petitioner alone but also to the Respondent Nos.4 to 11.

6) In view of the previous orders passed in this Petition, the Petitioner amended the Petition and arrayed both accused as Respondent Nos.2 and 3 and his said friends as Respondent Nos.4 to 11. The Investigation officer was present at the time of hearing this Petition. Through learned A.P.P., the Investigation Officer made a statement that, the investigation revealed that the aforesaid amount belongs to the Petitioner and Respondent Nos.4 to 11, as stated in the say filed before the trial Court and in the Revision. This Court find substance in the said statement, as the subject amount was seized within 8/9 days from the registration of said crime. The revisional Court also observed that, the seized cash belongs to the Petitioner and his friends.

7) The Investigation Officer has made a statement that, he has no objection to allow this Petition. Learned Advocate Ms. Jain states that Respondent Nos.2 and 3 have also no objection to release said amount in the interim custody of the Petitioner

and Respondent Nos.4 to 11. Said statements are accepted. No other person has claimed the interim custody of the seized amount. Learned counsel Mr. Solkar states that, the Petitioner has no objection to return the amount to the Petitioner and Respondent Nos.4 to 11 balancing to their shares in the original amount of Rs.94,28,000/-. The Investigation Officer, through learned APP and the learned counsel Mr. Solkar made a statement that the aforesaid cash has been deposited in the Government Treasury/bank account. As such, question does not arise of identification of the said cash during the course of hearing the prosecution evidence. Learned counsel Mr. Solkar and Learned Advocate Mr. Juned have submitted that, their parties would execute an indemnity bond towards release of the said cash and its refund, as and when directed by the trial Court.

8) In view thereof, the said amount of Rs.65,00,000/- can be released in the interim custody of the Petitioner and Respondents Nos.4 to 11, as shown in the table below.

Sr. No.	Name	Amount collected	Amount to be released in interim custody
1.	Jitesh Vakhariya (Petitioner)	9,00,000/- (9.55 %)	6,20,750/- (9.55 %)
2.	Lalit Vakhariya	9,00,000/- (9.55 %)	6,20,750/- (9.55 %)
3.	Rajesh Karande	12,00,000/- (12.73 %)	8,27,450/- (12.73 %)
4.	Ganraj Bhagat	15,00,000/- (15.90 %)	10,33,500/- (15.90 %)

5.	Anand Patel	9,00,000/- (9.55 %)	6,20,750/- (9.55 %)
6.	Aadhikrao Yelve	10,00,000/- (10.61 %)	6,89,650/- (10.61 %)
7.	Imtiyaz Halli	4,00,000/- (4.24 %)	2,75,600/- (4.24 %)
8.	Nitesh Sawant	4,00,000/- (4.24 %)	2,75,600/- (4.24 %)
9.	Kintesh Mashru	22,28,000/- (23.63 %)	15,35,950/- (23.63 %)
	Total	94,28,000/- (100 %)	65,00,000/- (100 %)

9) The Petition thus partly succeeds. Hence, following Order is passed :-

- O R D E R -

- i) Petition is partly allowed.
- ii) The seized amount of Rs.65,00,000/- shall be returned in the interim custody of the Petitioner and Respondent Nos.4 to 11, as shown against their names at serial Nos.1 to 9 respectively, in column No.4 of the table in paragraph 8 above.
- iii) The total amount of interest, if any, accumulated till date on the said cash amount of Rs.65,00,000/- also be released in the interim custody of the Petitioner and Respondent Nos.4 to 11, in proportion to the amount shown against their names in said column No.4.
- iv) Before releasing the amounts as directed in item Nos. (ii) and (iii) above, the trial Court concerned

shall cause the Petitioner and Respondent Nos.4 to 11 to execute an indemnity bond with one surety each that, they shall refund the released amounts as and when so directed by the said Court, along with interest towards using the said amounts till the date of its refund, at such rate as will be decided by the said Court.

v) The trial Court concerned to pass the final Order/s as to the claim/s for the said amount, at the conclusion of the trial in the aforesaid crime.

vi) The Petition is allowed in the aforesaid terms. Rule is made absolute.

[SHYAM C. CHANDAK, J.]