



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

268

CRM-M-4913-2018

Date of decision: 11.09.2024

SURJIT LAL

....Petitioner

V/s

STATE OF PUNJAB AND ORS

....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ashok Giri, Advocate, for the petitioner.

Mr. Shiva Khurmi, AAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. Prayer in this petition filed under Section 482 of the Cr.P.C. is for issuance of directions to respondents to unfreeze the bank account of the petitioner bearing No.0077104000123341 in IDBI Bank, Phagwara Branch, which was got freezed by the police without any order of competent Authority in case FIR No.31 dated 28.04.2013 under Sections 21/22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station, Nurmahal, District Jalandhar (Annexure P-1).

2. Learned counsel appearing for the petitioner has submitted that vide Annexure P-2, an application had been moved on 05.08.2014 by the SHO, Police Station Nurmahal, District Jalandhar, asking for freezing of the bank accounts of the petitioner, his wife and one Kulwinder Kaur. Subsequent to the said application dated 05.08.2014, the IDBI Bank, Phagwara had erroneously frozen the bank account of the petitioner.

3. It has been argued by the learned counsel that bank account of the petitioner was in no manner connected with the alleged recovery of the drug



may, after recording reasons for doing so, proceed to take all steps necessary for tracing and identifying such property.]

(2) The steps referred to in sub-section (1) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institution or any other relevant matters.

(3) Any inquiry, investigation or survey referred to in sub-section (2) shall be carried out by an officer mentioned in sub-section (1) in accordance with such directions or guidelines as the competent authority may make or issue in this behalf.

68F. Seizure or freezing of illegally acquired property.- *(1)*

Where any officer conducting an inquiry or investigation under section 68E has reason to believe that any property in relation to which such inquiry or investigation is being conducted is an illegally acquired property and such property is likely to be concealed, transferred or dealt with in any manner which will result in frustrating any proceeding relating to forfeiture of such property under this Chapter, he may make an order of seizing such property and where it is not practicable to seize such property, he may make an order that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, or of the competent authority and a copy of such order shall be served on the person concerned:

Provided that the competent authority shall be duly informed of any order made under this sub-section and a copy of such an order shall be sent to the competent authority within forty-eight hours of its being made.

(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the competent authority within a period of thirty days of its being made.

Explanation. For the purposes of this section "transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes-



- (a) the creation of a trust in property;*
- (b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;*
- (c) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power; and*
- (d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person.*

68G. Management of properties seized or forfeited under this Chapter.- (1) *The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government) as it thinks fit, to perform the functions of an Administrator.*

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (1) of section 68F or under section 68-1 in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is forfeited to the Central Government.

68H. Notice of forfeiture of property.-- (1) *If, having regard to the value of the properties held by any person to whom this Chapter applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of a report from any officer making an investigation under section 68E or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon*



him within a period of thirty days specified in the notice to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Chapter.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person:

[Provided that no notice for forfeiture shall be served upon any person referred to in clause (cc) of sub-section (2) of section 68A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause.]

2{Explanation. For the removal of doubts, it is hereby declared that in a case where the provisions of section 68J are applicable, no notice under this section shall be invalid merely on the ground that it fails to mention the evidence relied upon or it fails to establish a direct nexus between the property sought to be forfeited and any activity in contravention of the provisions of this Act.}

68-1. Forfeiture of property in certain cases. *(1) The competent authority may, after considering the explanation, if any, to the show cause notice issued under section 68H, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties:*

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person such other person also) does



not appear before the competent authority or represent his case before it within a period of thirty days specified in the show cause notice, the competent authority may proceed to record a finding under this sub-section ex parte on the basis of evidence available before it.

(2) Where the competent authority is satisfied that some of the properties referred to in the show cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under sub-section (1).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Chapter, stand forfeited to the Central Government free from all encumbrances:

[Provided that no of a illegally acquired property of any person who is of section or relative referred to in clause (cc) of sub-section (2) referred referred to in that clause or associate of a person referred to in that plause or holder of any property which was at any time previously held by a person referred to in that clause shall stand forfeited.

(4) Where any shares in a company stand forfeited to the Central Government under this Chapter, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

68J. Burden of proof.-- *In any proceedings under this Chapter, the burden of proving that any property specified in the notice served under section 68H is not illegally acquired property shall be on the person affected.*

68 K. To 68 Z:xxxxx xxxxx xxxxx

7. Before proceeding, further it is crucial to refer to the following observations made by the Supreme Court in paragraphs 28 and 29 of Aslam



Mohd. Merchant Vs. Competent Authority and others : (2008) 14 SCC

186:-

“28. It is, however, beyond any doubt or dispute that a proper application of mind on the part of the competent authority is imperative before a show cause notice is issued.

Section 68-H of the Act provides for two statutory requirements on the part of the authority viz: (i) he has to form an opinion in regard to his 'reason to believe'; and (ii) he must record reasons therefor.

Both the statutory elements, namely, 'reason to believe' and 'recording of reasons' must be premised on the materials produced before him. Such materials must have been gathered during the investigation carried out in terms of Section 68-E or otherwise. Indisputably therefore, he must have some materials before him. If no such material had been placed before him, he cannot initiate a proceeding. He cannot issue a show cause notice on his own ipse dixit. A roving enquiry is not contemplated under the said Act as properties sought to be forfeited must have a direct nexus with the properties illegally acquired.

29. It is now a trite law that whenever a statute provides for 'reason to believe', either the reasons should appear on the face of the notice or they must be available on the materials which had been placed before him.....”

8. Furthermore, in the reply dated 18.09.2023 submitted by the State, it has been admitted that the procedure mandated under Section 68E of the NDPS Act was not followed before issuing directions to the concerned bank to freeze the petitioner's bank account. It is also important to emphasize that the powers of search and seizure conferred upon the police are extraordinary, permitting intrusion into the private lives of citizens. Consequently, the law prescribes specific procedural safeguards to



serve as checkpoints in the exercise of these powers, ensuring the protection of citizens' rights.

9. Therefore, before freezing the bank account of a person, it is imperative that the concerned officer must have a ‘reason to believe’ that the property in question was acquired through illegal means; merely asserting that freezing the petitioner’s bank account is necessary to trace the origins of drug money does not constitute compliance with the aforementioned provision.

10. As a sequel to the above, this Court finds merit in the instant petition, which stand allowed accordingly. The respondents are directed to defreeze the bank account of the petitioner bearing No.0077104000123341 in IDBI Bank, Phagwara Branch.

(MANJARI NEHRU KAUL)
JUDGE

September 11, 2024
Poonam/vinay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No