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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 01.08.2024*

\+ CRL.M.C. 5893/2024

RAJESH SACHDEVA .....Petitioner

Through: Mr. Sunil Dalal, Sr. Advocate with Mr. Ankit Rana, Mr. Nikhil Beniwal, Mr. Mahabir Singh and Mr. Mohit Malik, Advocates.

versus

THE STATE (GOVT. OF NCT OF DELHI) & ANR. .....Respondents

Through: Ms. Meenakshi Dahiya, APP for the State with SI Sandeep, PS DBG Road. Mr. Mohit Mathur, Sr. Advocate with Mr. Vikas Bhardwaj, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

O R D E R

% **01.08.2024**

CRL.M.A. 22540/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.M.C. 5893/2024 AND CRL.M.A. 22539/2024 & CRL.M.A. 22541/2024

1. Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') has been preferred on behalf of the petitioner for setting aside order dated 27.07.2024 passed by learned CJM, Central District, Tis Hazari Court, New Delhi, whereby directions have been issued for release of amount of Rs.59,26,638.88/- from the account of petitioner/accused, Rajesh

Sachdeva in HDFC Bank to respondent no. 2/Pooja Jain.

2. Issue notice. Learned APP for the State and learned Senior Advocate for respondent no.2/complainant appear on advance notice and accept notice.

3. In brief, FIR No.9023 dated 11.10.2023 was lodged at the instance of respondent No.2/complainant Pooja Jain W/o Sanjay Jain, who alleged that petitioner/accused is a Chartered Accountant and partner in CA Firm Rajesh K Sachdeva and Associates, which was engaged as Auditors in their company and had access to sensitive financial information. Petitioner/accused in the last week of June, with an intention to commit fraud and cheating, represented that he is in urgent need of funds and asked for a temporary loan of Rs.1,35,00,000/- with a promise to return the same with decent return/interest. Petitioner/accused is alleged to have only partly returned the interest to the complainant and refused to discharge his liability, after inducing to part with the amount and make wrongful gain to himself.

4. During pendency of investigation, since an amount of Rs.59,26,638.88/- was transferred into the account of Rajesh Sachdeva, the same was freezed by the Investigating Agency. Further, vide impugned order dated 27.07.2024 passed by learned CJM, the aforesaid amount has been directed to be released to respondent no. 2/complainant against her filing of an indemnity bond.

5. Shri Sunil Dalal, learned Senior Advocate for the petitioner submits that allegations levelled by the complainant are vehemently disputed and since the case is still at initial stage of investigation, no directions for release of the aforesaid amount could have been made in favour of respondent no. 2/complainant. It is pointed out that neither notice was issued to the petitioner, nor any finding was given in terms of Section 107 of BNSS that the seized amount forms the proceeds of crime.

6. Petition is vehemently opposed by learned APP for the State alongwith Shri Mohit Mathur, learned Senior Advocate on behalf of respondent no.2/complainant.

7. At this stage, it may be appropriate to notice that under Section 106 of BNSS, 2023, any police officer may seize any property which may be alleged or suspected to have been stolen or which may be found under circumstances which creates suspicion of commission of any offence. Further, Section 107 dealing with attachment, forfeiture or restoration of property provides that where a police officer making an investigation has reason to believe that any property is derived or obtained, directly or indirectly as a result of a criminal activity or from the commission of offence, he may, with approval of Superintendent of Police or Commissioner of Police make an application to the Court or the Magistrate exercising the jurisdiction to take cognizance of the offence or commit for trial, for the attachment of such property. Further, sub-section (2) of Section 107 provides that if the Court or the Magistrate has reason to believe whether before or after taking evidence that all or any of such properties are proceeds of crime, the Court or the Magistrate may issue a notice upon such person calling him to show cause within a period of 14 days as to why an order of attachment shall not be made. However, sub-section (5) of Section 107 empowers the Court or the Magistrate to direct attachment or seizure by an interim order, if it is of the opinion that issuance of notice would defeat the object of attachment or seizure. Sub-section (6) of Section 107 further empowers the Court or the Magistrate to direct the District Magistrate to rateably distribute such proceeds of crime to the persons who are affected by such crime, if he finds the attached or seized properties to be the proceeds of crime.

8. Admittedly, in the present case, neither the show-cause notice is stated to have been issued to the petitioner nor any finding has been given to infer if the amount lying in the seized account is proceeds of crime, which needs to be released to respondent No.2/complainant. The same appears to have been released merely on no objection of the IO. The order dated 27.07.2024 passed by learned CJM, Central District, Tis Hazari Court, New Delhi is set aside.

9. During the course of proceedings, it is agreed by both the counsels on behalf of petitioner as well as on behalf of respondent no. 2/complainant that aforesaid amount of Rs.59,26,638.88/-, may be fixed deposited on auto renewal with HDFC Bank itself in the name of CJM, Central District, Tis Hazari Court, which shall not be released to either of the parties without orders of concerned Court, subject to the outcome of the investigation and filing of final report/chargesheet. The parties shall be at liberty to file appropriate application, before the concerned Court for release of amount, in the light of outcome of investigation.

Petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded through Investigating Officer to Manager of concerned Branch of HDFC Bank, Dehradun as well as learned Judicial Magistrate, for information and compliance.

(ANOOP KUMAR MENDIRATTA)
JUDGE

AUGUST 01, 2024/*p*