

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

WRIT PETITION NO.4590 OF 2024

WITH

INTERIM APPLICATION (ST.) NO.23447 OF 2024

IN

WRIT PETITION NO.4590 OF 2024

Mr. Prasad Rajnikant Sheth
residing at,
Flat No.3, 1st Floor, 247,
Amrut Towers, Telang Road,
Behind Ruia College,
Matunga, Mumbai – 400019.

... Petitioner

Vs.

1. The State of Maharashtra
Through the Public Prosecutor
2. Economic Offences Wing-Unit-IV
Through the Investigating Officer

3. Mr. Abhishek Rajnikant Sheth
Residing at, Plot No.104,
Flat No. 202, 2nd Floor, Rajniketan,
Hindu Colony, 4th Lane, Dadar (E),
Mumbai 400014.

... Respondents

Mr. Hrushikesh Mundargi with Mr. Pushkraj Deshpande i/by M/s ALMT
Legal, Advocates for the Petitioner.

Mr. Yogesh Dabke, Addl. P.P. for the Respondent No.1/State.

Mr. Satish Muley with Mr. Mosin Naik and Mr. Zhoalb Sayyed, Advocates for the Respondent No.3.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 12th MARCH, 2025.
PRONOUNCED ON : 9th JUNE, 2025.

JUDGMENT :

1. Rule. Rule is made returnable forthwith.
2. This petition under Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure 1973 (“the Code”), assails the legality, propriety and correctness of an order dated 5th July, 2023 passed by the learned Additional Chief Metropolitan Magistrate, Esplanade Mumbai whereby an application preferred by the Petitioner to defreeze his account bearing No.1572669960 maintained with Central Bank of India, Dadar T.T. Branch, Mumbai came to be rejected.
3. The background facts leading to the petition can be stated in brief as under :-
 - 3.1 Abhishek Sheth-Respondent No.3 is the brother of the Petitioner. Rajnikant, who passed away on 17th October, 2010, was the father of the Petitioner and Respondent No.3. The Petitioner’s father was endowed with properties.
 - 3.2 After the demise of the Petitioner’s father, all his investments in the equity markets were transferred in the name of his wife-

Meena Sheth, the mother of the Petitioner and the Respondent No.3. Meena Sheth passed away on 5th October, 2020.

3.3. The Petitioner alleges that after the demise of the mother, disputes arose between the Petitioner and the Respondent No.3 over the division of the property of their parents. The Respondent No.3 filed a suit bearing No.279 of 2022 before the High Court, Bombay for a declaration that the Respondent No.3 is entitled to 50% share in the securities and investments of their parents. The Respondent No.3 had also filed a complaint dated 30th May, 2022 with Economic Offences Wing, Zone 4, Mumbai ("EOW"). Post inquiry, the said complaint was closed with remark that the dispute was of civil nature. The Respondent No.3 again filed a complaint with Matunga Police Station.

3.4 Eventually, suppressing the fact that the previous complaint was closed after inquiry, the Respondent No.3 filed a complaint purportedly under Section 156(3) of the Criminal Procedure Code, 1973 ("the Code") being, Misc. Application No.1370 of 2023, before the learned Additional Chief Metropolitan Magistrate and, in the said complaint, on 16th May, 2023, the learned Metropolitan Magistrate passed an order to register and investigate the offences, as alleged. On the strength thereof FIR No.240 of 2023 came to be registered against the Petitioner for the offences punishable under Sections 406, 420, 465, 467, 468 and 471 of the Indian Penal Code, 1860 ("IPC").

3.5 The gravamen of indictment against the Petitioner was that the Petitioner had surreptitiously altered the nomination in the demat account maintained by the mother with Samco investments; mobile number was also dishonestly replaced so that Respondent No.3 and their mother should not get intimation regarding the transactions in the said demat account. The Petitioner had fraudulently got the securities transferred in his name under a purported gift by forging the signatures of their mother or by obtaining the signatures of their mother on the documents while she was virtually on death-bed. The Petitioner had also addressed correspondence from the email ID of the deceased, after her demise. Thereby, Crores of rupees were dishonestly and fraudulently converted by the Petitioner from the accounts of the mother.

3.6 During the course of investigation vide a communication dated 22nd June, 2023, the Investigating Officer debit freezed the Saving Bank Account No.1572669960 maintained by the Petitioner with Central Bank of India, Dadar T.T. Branch, Mumbai as the allegedly wrongfully converted amount was credited into the said account, purportedly under the provisions contained in Section 102 of the Code. An intimation thereof was given to the learned Metropolitan Magistrate on 23rd June, 2023.

3.7 The Petitioner preferred an application before the learned Additional Chief Metropolitan Magistrate seeking directions to de-freeze the account. It was *inter-alia* contended that on account of the order to debit freeze the said account the Petitioner was facing extreme hardship in sustaining his livelihood, bear the medical expenses and carry out routine day to day business activities.

3.8 By the impugned order, the learned Magistrate was persuaded to reject the application observing, *inter-alia*, that from the perusal of the statements placed on the record by the Investigating Officer, it appeared that there were as many as 64 entries which showed that funds had been credited to the subject account from the demat accounts; from which the funds were allegedly fraudulently diverted. Thus, there was nexus between the said account and the alleged offences.

3.9 Being aggrieved, the Petitioner has invoked the writ jurisdiction.

4. The State as well as the Respondent No.3-the First Informant have resisted the petition by filing affidavits-in-reply.
5. I have heard Mr. Hrushikesh Mundargi, learned counsel for the Petitioner, Mr. Yogesh Dabke, learned Addl. PP for the State, and Mr. Satish Muley, learned counsel for the Respondent No.3, at some length.
6. Mr. Mundargi, learned counsel for the Petitioner, would submit that the core controversy between the two brothers is over the succession to the estate left behind by their parents, especially the mother. The Respondent No.3 has already instituted a substantive suit for declaration of his purported one half share in the properties, being Suit (L) No.7600 of 2021. Thus, the disputes between the

parties can be effectually and completely adjudicated in the said suit. In fact, a criminal flavour has been given to the civil dispute between the two brothers. Mr. Mundargi invited the attention of this Court to the prayers in the plaint in the said suit, particularly, the declaration sought by the Respondent No.3 that, he is entitled to 50% share in the shares/stocks left behind by late Meena in her demat accounts with Samco Securities Limited and Greshma Shares and Stocks Limited, with respect to which the offences have been allegedly committed.

7. Secondly, Mr. Mundargi would urge, since the demat accounts have been already frozen, the interest of the Respondent No.3 has been adequately protected. In the event, the Respondent No.3 succeeds in the suit, the Court could balance the equities by passing appropriate orders. Therefore, there is no justification for freezing the savings bank account of the Petitioner.
8. It was submitted by Mr. Mundargi that the freezing of the savings bank account has grave consequences as the household and routine business expenses of the Petitioner could not be met. Mr. Mundargi submitted that the Petitioner is ready to file an undertaking to deposit the amount which stands to the credit of the said account alongwith interest as may be directed to be paid by the Court, in the event, the Petitioner is found guilty of the offences. Therefore, the learned Magistrate was not justified in rejecting the application to defreeze the subject account.

9. Mr. Dabke, learned APP, stoutly resisted the prayers in the petition. It was submitted that the subject account was the very savings bank account attached to demat accounts, from which the funds were fraudulently diverted. All the transactions have been shown in the said account. In such circumstances, it cannot be urged that the said account has no nexus with the alleged offences. The Investigating Officer was, therefore, fully justified in ordering the freezing of the operations in the subject account.
10. Mr. Muley, learned counsel for the Respondent No.3, supplemented the submissions of Mr. Dabke. At the outset, the tenability of the Petition was assailed on the ground that the Petitioner has an equally efficacious remedy of preferring a revision against the impugned order in the Court of Sessions and, therefore, this Court ought not to entertain the petition. Secondly, it was submitted that the subject account was used for as many as 64 transactions in the demat accounts of the deceased. It was nowhere denied by the Petitioner that the amounts were transferred to the subject account from the demat accounts in question. A sum in excess of Rs.4 Crores had been further transferred by the Petitioner from the subject account. Therefore, the prayer to defreeze the subject account was rightly rejected by the learned Magistrate. Such an order does not warrant interference in exercise of the extraordinary writ jurisdiction, submitted Mr. Muley.
11. Before advertng to the merits of the matter, it may be apposite to note that the rule of existence of an efficacious alternate remedy is a self-imposed restriction on the exercise of writ jurisdiction. It cannot be laid down as an immutable rule of law that the existence of a

revisional remedy completely debars the High Court from examining the legality, propriety and correctness of an order in exercise of writ jurisdiction. In the instant case, in the light the view which this Court is ultimately persuaded to take, this ground of existence of an alternate remedy does not dissuade the Court from determining the petition on merits.

12. Evidently, the subject account came to be freezed by the Investigating Officer, in exercise of the power under Section 102 of the Code. Section 102 of the Code reads as under :-

“102. Power of police officer to seize certain property.

(1) 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 create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer-in-charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, [or where there is difficulty in securing proper accommodation for the custody of such property, or where the continue retention of the property in police custody may not be considered necessary for the purpose of investigation], he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same. [Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of

Police and the provisions of Sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sales.]

13. The phraseology of Sub-Section (1) of Section 102 indicates that the Police Officer has the power to seize any property which may be found under the circumstances of the given case creating suspicion of the commission of any offence in relation thereto. The key expressions in Sub-Section (1) of Section 102 are “any property” and “circumstances which create suspicion of commission of any offence”. To put in other words, the police officer is empowered to seize the property only when there exist circumstances which create suspicion of commission of any offence in relation to that property.

14. In the case of *State of Maharashtra Vs. Tapas D. Neogy*¹, the Supreme Court was confronted with the question as to whether the bank account of any accused or any relative of an accused can be held to be property within the meaning of Section 102 of the Code. After advertent to the divergent views recorded by the various High Courts, the Supreme Court held that there was no justification to give any narrow interpretation to the provisions of Section 102 of the Code. Thus, the bank account of the accused or any of his relations is “property” within the meaning of Section 102 of the Cr.P.C. and a police officer in course of investigation can seize or prohibit the operation of the said account if such accounts have direct links with the commission of the offence which the police officer is investigating into.

1 (1999)7 Supreme Court Cases 685

15. Following the aforesaid pronouncement in the case of ***Teesta Atul Setalvad Vs. State of Gujrat***², the Supreme Court held that the sweep and applicability of Section 102 of the Code was no more *res-integra*. It was *inter-alia* held that it was not necessary to give prior notice to the account-holder before freezing the bank accounts.

16. In the case of ***Nevada properties Private limited Vs. State of Maharashtra and another***³, Supreme Court was confronted with the question whether the police officer has power to seize immovable properties under the provisions of Section 102 of the Code. After an elaborate analysis, the three Judge Bench of the Supreme Court held that the expression, “any property” appearing in Section 102 of the Code would not include immovable property. In the said case, the Supreme Court expounded the import of the expression, “circumstances which create suspicion of the commission of any offence”, and that bears upon the determination of the controversy at hand.

17. The observations in paragraph No.31 are material and, hence, extracted below:-

“31. The expression “circumstances which create suspicion of the commission of any offence” in Section 102 does not refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not “any property” is required to be seized. The word “suspicion” is a weaker and a broader expression than “reasonable belief” or “satisfaction”. The police officer is an investigator and not an adjudicator or a decision maker. This is the reason why

² (2018) 2 Supreme Court Cases 372

³ (2019)20 Supreme Court Cases 119

the Ordinance was enacted to deal with attachment of money and immovable properties in cases of scheduled offences.”

(emphasis supplied)

18. The Supreme Court has in terms held that the expression, “circumstances which create suspicion of commission of any offence” does not refer to a firm opinion or an adjudication/findings by the Police Officer who is, an Investigator and not an Adjudicator. The word “suspicion” is weaker and broader expression than a reasonable belief or satisfaction. This enunciation furnishes a test to determine whether the action of the Police Officer to freeze the bank account is justifiable.

19. An useful reference can also be made to a recent pronouncement of the Supreme Court in the case of *Shento Varghese Vs. Julfikar Husen and ors.*⁴ wherein in the context of the procedural requirement envisaged under Section 102(3) of the Code, the Supreme Court considered the question, whether the delayed reporting of the seizure to the Magistrate vitiates the seizure order altogether? While answering the question in the negative, the Supreme Court enunciated that the validity of the exercise of the power under Section 102(1) of the Code can be questioned either on jurisdictional ground or on the merits of the matter. In other words, the order of seizure can be challenged on the ground that the Seizing Officer lacked jurisdiction to act under Section 102(1) of the Code or that the seized item does not satisfy the definition of “property” or on the ground that the property which was seized could not have given rise to suspicion concerning the commission of a crime and thereby justify the seizure.

20. The decision in ***Shento Varghese*** (supra) thus encapsulates the points on which an order of seizure or freezing of the account passed under Section 102 of the Code can be assailed, namely, (i) lack of jurisdiction, (ii) the item seized does not satisfy the description of “property” and (iii) absence of nexus between the seized property and the alleged offence.
21. On the aforesaid touchstone reverting to the facts of the case, it is necessary to note that there was no challenge to the seizure order on the procedural count. In fact, on the very next day of the freezing of the account, the Investigating Officer had given intimation to the jurisdictional Magistrate. Nor the order of the Investigating Officer was assailed on the jurisdictional front.
22. In view of the decisions of the Supreme Court in the cases of ***Tapas D. Neogy*** (supra) and ***Teesta Atul Setalvad*** (supra), the action of freezing of the bank account can hardly be challenged on the ground that the bank account does not fall within the ambit of the expression “any property”.
23. The endeavour of Mr. Mundargi was to impress upon the Court that the dispute between the parties is essentially over the succession to the estate of their parents. Since the Respondent No.3 had already instituted a suit for declaration of his purported 50% share in the estate left behind by the parents, the criminal action was wholly unwarranted.

24. I am afraid that can be a sustainable ground to challenge the action of the freezing of the bank account. As noted above, there are allegations of forgery of the record and fraudulent diversion of funds from the demat account of the mother of the Petitioner. Whether those allegations are sustainable, is a matter for adjudication at the trial.
25. In the context of the inquiry warranted in this petition, it must be noted that Mr. Mundargi fairly submitted that, the analysis of the statement of accounts appended to the charge-sheet, indicates that there were as many as 64 entries of transfer of the amounts to the subject account from the demat accounts in question. In fact, Mr. Mundargi tendered a chart of the proceeds received in the savings bank account of the Petitioner from sale and purchase of the securities held in Samco Securities Limited and Greshma Shares and Stocks, prior to, and after, the death of mother.
26. The cumulative picture which emerges is that there were aggregate receipts to the tune of Rs.8,81,80,002/- in the subject account of the Petitioner from the demat accounts of his mother.
27. In the face of the aforesaid material and as many as 64 entries of the credit of the amounts in the subject account of the Petitioner from the demat accounts, it would be hazardous to draw an inference that there was no nexus between the amounts which got credited to the subject account of the Petitioner from the demat accounts of the mother, in respect of which the offences were allegedly committed. If the test of suspicion, as enunciated by the

Supreme Court in the case of *Nevada properties* (supra) is applied, the Investigating Officer can be said to have been justified in ordering debit freeze in the subject account. The voluminous material on record and the statements of the witnesses, *prima facie*, establish the nexus between the proceeds lying in the subject account and the alleged offences.

28. There is, however, another aspect of the matter, which cannot be lost sight of. It is specific case of the Petitioner that in the said account a sum of Rs.50 lakhs was credited on 17th May, 2023 by way of sale proceeds of one of the lands sold by the Petitioner. The said amount has no nexus with the alleged offences, even remotely. In order to substantiate the said contention the Petitioner has placed on record a copy of Sale Deed dated 17th May, 2023 (Exhibit "U"). In the receipt appended to the said sale deed, there is a reference to transfer of a sum of Rs.50 lakhs by R.T.G.S. on 17th May, 2023. A copy of the statement of account of the subject account indicates that the said sum of Rs.50 lakhs was credited to the subject account on 17th May, 2023 by R.T.G.S.

29. The Respondent No.3 made an endeavour to contest the claim of the Petitioner contending that it is a matter of investigation, whether the said land was purchased by the Petitioner out of his own income or belonged to their parents. The resistance is based on a far-fetched ground. Evidently, the said amount of Rs.50 lakhs was credited to the account of the Petitioner after the complaint was lodged by the Respondent No.3 before the learned Magistrate and even the order passed by learned Magistrate under Section 156(3) of the Code. There is no nexus between the said credit of Rs.50

lakhs and the alleged fraudulent diversion of the funds from the demat accounts of the mother, which is the gravamen of indictment against the Petitioner.

30. In the aforesaid view of the matter, I am inclined to hold that though the order of freezing the account can be sustained, yet, the Petitioner deserves liberty to withdraw the said amount of Rs.50 lakhs credited to the subject account on 17th May, 2023 as it has no nexus whatsoever with the alleged offences.

31. Resultantly, the petition deserves to be partly allowed. Hence, the following order :-

ORDER

(i) The Petition stands partly allowed.

(ii) The impugned order stands modified as under :-

The order of debit freezing account No.1572669960 stands upheld subject to the liberty to the Petitioner to withdraw a sum of Rs.50 lakhs credited to the said account on 17th May, 2023.

(iii) The Chief Manager/Manager, Central Bank of India, Dadar T.T. Branch shall permit the Petitioner to withdraw/transfer the said sum of Rs.50 lakhs from the subject account.

(iv) The Petitioner shall file an undertaking before the Trial Court that the Petitioner will bring back the said amount alongwith interest at such rate as may be directed by any Court, in the event of final adjudication, within a period of one week from today.

(v) In the circumstances, there shall be no costs.

(vi) The petition stands disposed.

- (vii) Rule is made absolute to the aforesaid extent.
- (viii) In view of the disposal of the Petition, the Interim Application (St.) No. 23447 of 2024 also stands disposed.

(N. J. JAMADAR, J.)