IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.831 OF 2024

Upendra Gunwantrao Muley,
aged about 50 years, occupation-
Chartered Accountant, r/o plot No.69,
Mahajan Colony, N-2 CIDCO,
Aurangabad, taluka and district Aurangabad. ….. **Petitioner.**

:: **V E R S U S** ::

State of Maharashtra, through its
Police Station Officer, Police Station
Risod, taluka Risod, district Washim. ….. **Respondent**.

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Shri R.S.Kurekar, Counsel for the Petitioner.
Mrs.S.S.Dhote, Additional Public Prosecutor for the Respondent/State.
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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 10/01/2024
PRONOUNCED ON : 27/01/2025

JUDGMENT

1. Heard learned counsel Shri R.S.Kurekar for the petitioner and learned Additional Public Prosecutor

Mrs.S.S.Dhote for the State. **Rule**. By consent, the matter is heard finally.

2. By this petition, following reliefs are claimed:

(i) To quash and set aside order under Exh.115 dated 5.12.2022 and Exh.336 dated 17.8.2024 passed by learned Additional Sessions Judge, Washim in Special Case ACB No.35/2022, and

(ii) To release the following frozen bank accounts of the petitioner by removing the lien imposed by the police : 20004036240, 11072787659, 34788804989, 35711707321, 33392055107, 31772163976 held with the State Bank of India and 0321020001304 held with the DCB Bank.

3. Facts necessary for disposal of the petition are as under:

The petitioner is practising Chartered Accountant and he was engaged by Trust of Smt.Bhavna Pundlikrao Gawali as an External Statutory Auditor since 2014. He is, therefore, not a public servant under the Indian Penal Code or Prevention of Corruption Act, 1988. On the basis of a complaint by Smt.Bhavna Pundlikrao Gawali dated 12.5.2020, alleging defalcation and theft against the office bearers of the public charitable trust and the petitioner, an offence was registered vide Crime No.389/2020. During investigation, it revealed that the petitioner along with other co-accused indulged in huge misappropriation of funds of Trust namely Mahila Utkarsha Pratishthan to the tune of Rs.59,91,20,200/-. The petitioner in his individual capacity alleged to have received received Rs.25,65,000/- out of the misappropriation amount. It further revealed that he has indulged in preparing the false document along with other co-accused and obtained false signatures thereby creating an incorrect Audit Report. Therefore, the crime was registered against him under Sections 468, 471, 477(a) and 120(b) of the Indian Penal Code along with 7, 13(1)(a)(b) and 13(2) of the Corruption Act. During the investigation, role of the petitioner was revealed and it revealed that the petitioner has obtained huge benefit for himself by misappropriating the public money and, therefore, his accounts were frozen. The petitioner has filed an application for defreezing the said accounts. The Investigating Officer has specifically submitted that the accounts of the petitioner which were frozen could be defrozen by restricting the petitioner from withdrawing the said amounts which were in the said accounts on the date when the said accounts were frozen on 5.12.2022. Being aggrieved and dissatisfied with the same, the present petition is filed for removing the said restrictions by quashing the order passed by learned trial judge.

4. Learned counsel for the petitioner submitted that while releasing the petitioner on bail, it is observed by this court that there is no material on record to show that the

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petitioner was conspirator in the present matter. The petitioner had filed an application under Section 451 read with 457 of the Code of Criminal Procedure directing that the bank accounts of the petitioner's wife be defrozen unconditionally and permission to allow, while allowing the petitioner to use his accounts, but placing a lien on the petitioner's bank account of the balance amount as on the date of freezing. Learned trial judge committed an error. He has filed an application vide Exh.271 to set aside the conditions, which is also rejected. It is contended that no purpose will be served by keeping the lien on the petitioner's bank accounts inperpetuity as there is no possibility of the trial concluding in near future. The petitioner has never received his fees or dues in cash and only through RTGS. The said bank accounts are frozen without investigating whether these accounts are connected with the alleged offence. Thus for all above grounds, the orders passed by learned Additional

Sessions Judge, Washim below Exhs.115 and 336 deserve to be quashed and set aside.

5. Learned Additional Public Prosecutor for the State strongly opposed the petition on the ground that during investigation it reveled that the petitioner had received monetary benefits and if the said accounts are released, the petitioner would withdraw the entire amount which would be against the interests of justice. The condition imposed, considering his involvement in a monetary benefit, is a fair condition considering the gravity of the offence.

6. Perusal of the record reveals that the crime is registered against the petitioner on an allegation that he is involved in economic offence which is registered against office bearers of the Trust namely Mahila Utkarsha Pratishthan, Risod. During the investigation, involvement of the petitioner revealed in preparing false documents and false signatures thereby creating incorrect Audit Report. The role

of the petitioner further revealed in receiving the monetary benefits and, therefore, in view of Section 102 of the Code, the accounts were frozen. As far as contentions of the petitioner that he has not received any monetary benefits and his involvement is not in the alleged offence, the material investigation is the Forensic Audit Report collected by the Investigating Officer during the investigation. The Forensic Audit Report shows the unattested photo copies of bank statements of Jan Shikshan Sanstha, Washim; Mahila Utkarsha Pratishthan, Washim; Bhavana Agro Products and Services Pvt Ltd. and the bank statements of the accused are perused. Perusal of the said documents reveals that the petitioner had transferred amount of Rs.18,50,000/- to the bank account No.20004036240 with the SBI, Aurangabad. It further revealed that the petitioner was direct beneficiary of Rs.85,00,000/- belonging to Mahila Utkarsha Pratishthan which was transferred through BAPSPL and to co-accused Ashok Gandole. It further revealed that Mahila Utkarsha

Pratishthan has transferred amount Rs.1,18,87,170/- to the petitioner during the period from 24.9.2014 to 4.10.2016. It further revealed that accused Ashok has transferred amount of Rs.1,46,21,720/- to the petitioner during the period from 28.11.2013 to 24.7.2019. The conclusion of the Audit Report shows that co-accused Ashok and the petitioner have diverted the funds belonging to Mahila Utkarsha Pratishthan to BAPSPL the company owned and controlled by co-accused Ashok and have obtained personal benefits to the extent stated therein. Thus, involvement of the petitioner reveals from the Forensic Audit Report.

7. A plain reading of sub-section (1) of Section 102 indicates that the police officer has the power to seize any property which may be found under circumstances creating suspicion of the commission of any offence. The expression "any property" and "any offence" has made the applicability of the provisions wide enough to cover offences created under any Act. But two preconditions for applicability of Section

102(1) are that it must be "property" and secondly, in respect of the said property there must have been suspicion of commission of any offence.

8. In this view of the matter, if the facts of the present case are considered, it shows that the Forensic Audit Report shows involvement of the petitioner in the money gain on the basis of forged documents.

9. Thus, the amounts are received by the petitioner in his bank accounts with the help of the co-accused. On examination of the provision of Section 102 of the Code and validity of an order passed by the police officer as well as by the court prohibiting the bank from paying amount to the accused from his accounts it would show that the said condition is imposed with an intention that on withdrawal of the amount by the petitioner there would be difficulty in proving the charges against the the petitioner.

10. It is well known that corruption in public offices has become so rampant that it has become difficult to cope with the same. Then again the time consumed by the Court in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused, then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the Courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. Therefore, conditions imposed by learned trial Judge keeping lien on the said attached property that the petitioner shall keep the amount which was in the above accounts on the date when the banks accounts were frozen and it is specially clarified that the petitioner is permitted to operate the bank

accounts Nos.20004036240, 11072787659, 34788804989, 35711707321, 33392055107, 31772163976, and 0321020001304, but he is not permitted to withdraw the amount which was in the accounts when the accounts were frozen, are just and reasonable conditions.

11. Prohibiting the petitioner from withdrawing the amounts which were in the said accounts is considering his involvement in the crime and, therefore, the order impugned is just and proper and no interference is called for.

12. In this view of the matter, the petition deserves to be dismissed and the same is **dismissed**.

Modified/corrected as per the Hon'ble court's order dt.31.1.25

13. The observation made in the writ petition as to the merits of the matter, the trial Court shall not be influenced by the same.

Rule stands discharged. The petition is **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

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