IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] NO. 448 OF 2025

APPLICANT : Shailesh Govindbhai Gadhvi,
Age 47 years, Occu. Private,
R/o Pithad Dham Shailesh Kunj,
Jam nagar, Rajkot, Gujarat – 360 001

VERSUS

NON-APPLICANTS : 1] State of Maharashtra,
through P.S.O, P.S.,
Cyber Police Station, Nagpur.

2] Mahesh Dabir,
NGRT Pvt. Ltd., Shop No.2,
Nexus Point, Civil Lines, Nagpur.

Mr. Mohd. Parvez Opai, Advocate for the applicant.
Mr. Ujwal R. Phasate, A.P.P. for non-applicant no.1/State
Mr. J. B. Gandhi, Advocate for non-applicant no.2

CORAM : M. W. CHANDWANI, J.
DATE : MAY 08, 2025

ORAL JUDGMENT

1. **RULE.** Rule made returnable forthwith. By consent of the learned counsel for the parties, the matter is taken up for final disposal.

2. By this application, the applicant is challenging the order

dated 07.03.2025 passed by the learned Judicial Magistrate, First Class, Nagpur, thereby allowing the application bearing Misc. Criminal Application No. 87/2025 filed by respondent no.2 – NGRT Systems Pvt. Ltd., a company registered under the Companies Act, 1956, with a direction to the Manager of Axis Bank to transfer the amount of Rs.1,11,67,619/- from the account of the applicant to the account of the non-applicant no.2-Company.

3. Brief facts of the case are necessary to decide this application -

The complainant in Crime No. 02/2025 registered with Nagpur City Cyber Police Station, Nagpur, is the Vice President (Finance) of non-applicant no.2-Company. On 30.12.2024, he received a message on his mobile no. 7093079464 that the said number belongs to the Director of the company, namely Shantanu Gadre. Accordingly, he saved the said number in the name of Shantanu Gadre, Director of the company. On 02.01.2025 he received a message from the said number that he being the Director of the Company, is in a meeting and to finalize the deal, he requires Rs.1,95,00,000/-. Accordingly, the complainant was asked to transfer an amount of Rs.1,95,00,000/- in account no. 924020028626919 with Axis Bank. Considering him as the Director of the Company and the fact that the fund was required for finalizing a deal of the company, the complainant transferred the said amount to the account to which he was directed. When this fact was informed to Director Smt. Pranoti Gadre, who is the wife of Director Mr. Shantanu Gadre, she informed that no such deal was going to be finalized and the mobile number does not belong to Mr. Shantanu Gadre. Therefore, suspecting that a fraud has been committed on the company, he immediately lodged the complaint with the Cyber Cell police station and the offences under Sections 319(2), 318(4) and 3(5) of the Bhartiya Nyay Sanhita, 2023 and under Sections 66(c) and 66(d) of the Information Technology Act, 2000 were registered. Axis Bank was directed to freeze the account of applicant. Consequently, Axis Bank freezed the account of non-applicant no.2. At that time the amount of Rs.1,11,67,619/- was lying in the said account, the applicant is arrested and now he is in MCR. During the course of investigation, non-applicant no.2 company applied before the learned Magistrate seeking a direction to Axis Bank to retransfer an amount of Rs.1,11,67,619/- which was lying in the account at the time of freezing of the account, to the account of the applicant from the account of non-applicant no.2. The learned Magistrate allowed the said application by the impugned order. Being aggrieved by the said order, the applicant is before this Court by preferring the present application.

4. Mr. Opai, learned counsel appearing for the applicant vehemently submitted that the learned Magistrate has not issued notice to the petitioner before passing any adverse order against him. According to him, principles of natural justice have not been followed. The another contention which has been canvassed is that the account of the petitioner has been misused by the co-accused. Though Rs.1,95,00,000/- have been transferred in the account of the applicant, the co-accused had already withdrawn an amount of Rs.90,00,000/- and therefore, the amount of the company which remained in the account of the petitioner is Rs.1,05,00,000/- whereas the learned Magistrate has directed to transfer Rs.1,11,67,619/- which is in excess by Rs. 6,00,000/-. Therefore, the learned Magistrate ought not to have directed to the bank to transfer the entire amount of Rs,1,11,67,619/-.

5. Per contra, Mr. Phasate, learned APP and Mr. J. B. Gandhi, learned counsel for non-applicant no.2 vehemently submitted

that it is an open and shut case. The account entries would show that there is initial transfer of an amount of Rs.1,95,00,000/- and even after the direction of the Court to transfer of Rs.1,11,67,619/-, Rs.84,00,000/- remained to be recovered from the applicant. Therefore, the submission that Rs.6,00,000/- in excess has been directed to be transferred is incorrect. It is also informed that a notice was issued to the applicant before passing the order and even compliance under Section 106(3) of the BNSS has been filed.

6. Learned APP filed a certified copy of the pursis filed before the JMFC informing service of the notice by RPAD along with the track report on record which clearly shows that the parcel containing the notice has been delivered at the address of the account holder. The address shown in the postal receipt is 'V.S.Trading, Parsana Nagar, Rajkot' which is the address of the applicant appearing in the cause title of the application. Therefore, the submission is meritless.

7. It is a matter of record that an amount of Rs.1,95,00,000/- has been transferred from the account of the non-applicant no.2 to the account of the applicant. Whether that amount

has been controlled or managed by the co-accused was not the question before the Magistrate. The question was that an amount to the tune of Rs.1,95,00,000/- was transferred to the account of the applicant by duping the complainant. Whereas, the amount which was lying in the account of the applicant at the time of freezing of the account was Rs.1,11,67,619/-. To the fortune of the complainant that account got immediately freezed at the initial stage of the investigation and therefore, this amount can be retransfered to the account of the Company. Therefore, the contention of the learned counsel for the applicant that the applicant is put to loss of Rs.6,00,000/- cannot be considered. At the most, he may recover the same from other co-accused. That apart, the order of the learned Magistrate will be subject to the outcome of the trial.

8. The another objection raised by the applicant is that as per the mandate of Section 106 of the BNSS, information to the learned Magistrate regarding freezing of the account has not been given. In reply, the learned APP submitted that a copy of the letter/notice dated 04.01.2025 addressed to the Branch Manager of Axis Bank requesting to credit the freezed amount in the account of the company was also sent to the learned Magistrate, which amounts

to compliance of Section 106(3) of the BNSS.

9. Without going into the controversy whether this is a compliance under Section 106(3) of the BNSS or not, I must state that the object of the said provision of informing the Magistrate was added with an intent to have a check on the powers of the police and non-compliance of the said provision will not dis-entitle the Company to have its amount back. The consequence, if any, of non-reporting the fact of freezing the account to the Magistrate will be faced by the prosecution but for that reason, the order of the Magistrate cannot be said to be erroneous. Therefore, it appears that a technical objection has been raised just to resist the transfer of the amount from the account of the applicant to the account of non-applicant no.2. The submission is without merit. Therefore, the grounds raised in the application are unsustainable. The application deserves to be dismissed.

10. Accordingly, the Criminal Application is dismissed.

11. At this stage, the learned counsel for the applicant prays for extension of stay granted by this Court for enabling him to

approach the Hon'ble Supreme Court to get this order tested. The complainant in spite of having duped to the tune of Rs.1,95,00,000/- has got the amount of Rs.1,11,67,619/- only, that too after a long time i.e. about four months, perhaps due to the prompt action taken by the Cyber Cell. That apart, the learned Magistrate has already taken care in this regard and directed the applicant before him (non-applicant no.2 herein) to execute an undertaking that if the ownership of said amount would be decided in favour of other person, he/she will forthwith deposit the said amount as per Court's direction. So, even if the order passed by the learned Magistrate is reversed, non-applicant no.2 which is a Company registered under the Companies Act has undertaken to retransfer the amount. Therefore, the request is refused.

12. The application stands disposed of. Rule discharged.

(M.W.Chandwani, J.)

Diwale

Signed by: DIWALE
Designation: PS To Honourable Judge
Date: 10/05/2025 14:43:06