Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 6832 OF 2025

Vishal Poonam Garange @ Vishal Punambhai Garange ...Petitioner

Versus

The State of Maharashtra ...Respondent

Ms. Ridhima Mangaonkar, a/w Sumati Gupta and Dinesh Jadhwani, i/b W3Legal LLP, for the Petitioner.
Smt. R. S. Tendulkar, APP for the State – Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 9th JANUARY, 2O26

JUDGMENT:-

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. The petitioner – accused takes exception to an order dated 17th October, 2025 passed by the learned Additional Sessions Judge, Greater Mumbai, in Sessions Case No.232 of 2021, whereby an application preferred by the petitioner to de-freeze the fixed deposit accounts aggregating to the face value amount of Rs.18,00,000/- maintained with Indian Post Office, Kuber Nagar Post Office Branch, Gujarat, came to be rejected.

3. On 21st December, 2019, Mr. Manoj Jain, a jeweller by profession, had purchased over 50 kg. of silver from Mr. Ravi

Sihal. A trunk containing those silver bricks was kept in the car of Mr. Jain. The said car was parked in the parking area of the building in which Mr. Jain resides. An unidentified person committed theft of those silver bricks by breaking windshield of the car. Thus FIR No.327 of 2019 was registered at Matunga Police Station for an offence punishable under Sections 379, 395 and 427 of the Indian Penal Code, 1860 ("the Penal Code") against unknown persons. As the investigation revealed the complicity of the petitioner, he came to be arrested.

4. During the course of investigation, cash amount of Rs.29,04,000/- was recovered and the fixed deposits of the face value of Rs.18,00,000/- maintained with Kuber Nagar Post Office were freezed. By orders dated 23rd December, 2020 and 4th November, 2023; cash amount of Rs.29,04,000/- came to be released in favour of the first informant.

5. The petitioner preferred an application seeking de-freezing of the said fixed deposit accounts, as there was no nexus between the amount deposited under the said accounts and the alleged offences.

6. By the impugned order the learned Sessions Judge rejected the application observing, *inter alia,* that the accused were facing serious charges for the offences punishable under

Sections 395 and 427 of the Penal Code and, therefore, it was not proper to de-freeze the said fixed deposit accounts. The learned Additional Sessions Judge, however, noted that the seized cash amount had been returned to the first informant.

7. Being aggrieved, the petitioner has invoked the writ jurisdiction.

8. Ms. Mangaonkar, the learned Counsel for the petitioner, submitted that the initial freezing of the fixed deposit accounts was itself unjustifiable. The incident had occurred subsequent to the deposit of the said amount by the petitioner with the post office. By no stretch of imagination it could, thus, be urged that the property might be alleged or suspected to have been stolen or that the circumstances were such that they gave rise to the suspicion of commission of any offence in relation to the said property. Thus, the provisions contained in Section 102 of the Code of Criminal Procedure, 1973 ("the Code") were not at all attracted, submitted Ms. Mangaonkar.

9. In opposition to this, Smt. Tendulkar, the learned APP, supported the impugned order. It was submitted that the allegations against the petitioner are grave, and, therefore, the learned Sessions Judge correctly exercised the discretion not to de-freeze the fixed deposit accounts.

10. The copies of the fixed deposit accounts passbook placed on record, indicate that those deposits were made during the period 2nd August, 2018 to 9th December, 2019. The incident, in question, had occurred on 21st December, 2019. Keeping in view this timeline, the prayer of the petitioner for de-freezing of the accounts was required to be appreciated by the learned Sessions Judge.

11. It would be contextually relevant to note that the first informant had filed applications for return of the amount which was seized by the Investigating Officer during the course of investigation. It was the claim of the first informant that about 60 kg. of silver, then valued at Rs.28,50,000/- was stolen. The investigating agency had seized an amount of Rs.29,04,000/-. By an order dated 23rd December, 2020, the learned Metropolitan Magistrate, Kurla, had allowed an application preferred by the first informant and directed the return of an amount of Rs.18,04,000/- seized during the course of investigation subject to certain terms and conditions. By a subsequent order dated 4th November, 2023, passed by the learned Additional Sessions Judge, a further sum of Rs.11,00,000/- was ordered to be returned to the first informant. Resultantly, a sum of Rs.29,04,000/-, which was seized during the course of investigation, was released in favour for the petitioner. In the impugned order, the learned Additional Sessions Judge took note of the release of the aforesaid amount in favour of the first informant and, yet, declined to direct de-freezing of the fixed deposit accounts primarily on account of the nature and gravity of the offences.

12. The learned Additional Sessions Judge lost sight of the nature and import of the provisions contained in Section 102 of the Code. A Police Officer is empowered to seize any property by invoking the power under Section 102 of the Code provided the said property may be alleged or suspected to have been stolen or was found under circumstances which created suspicion of commission of any offence.

13. Undoubtedly, a 'Bank account' falls within the ambit of the term, "property" employed in Section 102 of the Code. A profitable reference, in this context, can be made to the decision of the Supreme Court in the case of ***State of Maharashtra vs. Tapas D. Neogy***[1]**,** wherein the Supreme Court resolved the controversy as to whether a Bank account can be seized by invoking the power under Section 102 of the Code, and held that the bank account of the accused or any of his relations, is

1 (1999) 7 Supreme Court Cases 685.

"property" within the meaning of Section 102 of the Code, and a Police Officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into.

14. The pivotal condition for exercise of the said power is the nexus between the property which is seized and the allegation or suspicion that the said property might have been stolen or it might have been found under circumstances which create suspicion of the commission of any offence. A police officer has no general power of seizure of any property, unconnected with the alleged offences under investigation. If the nexus between the property which is seized and the offence which the accused is alleged to have committed is not *prima facie* borne out, then such property cannot be seized under Section 102 of the Code, for the mere reason that the accused holds such property, unless the statutory provisions permit such seizure or confiscation.

15. In the case of ***M. T. Enrica Lexie and another vs. Doramma and others***[2]**,** the Supreme Court after adverting to the provisions contained in Section 102 of the Code emphasized that a property not suspected of the commission of offence which is

2 (2012) 6 SCC 760.

being investigated into the Police Officer cannot be seized. The observations in paragraph 14 of the said judgment read as under:

> "14. The police officer in course of investigation can seize any property under Section 102 if such property is alleged to be stolen or is suspected to be stolen or is the object of the crime under investigation or has direct link with the commission of offence for which the police officer is investigating into. A property not suspected of commission of the offence which is being investigated into by the police officer cannot be seized. Under Section 102 of the Code, the police officer can seize such property which is covered by Section 102(1) and no other."
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> (emphasis supplied)

16. In view of the aforesaid position in law, especially when an amount of Rs.29,04,000/- has already been released in favour of the first informant in the wake of the allegations that the value of the stolen property was to the tune of Rs.28,50,000/-, and absence of any nexus between the fixed deposit accounts, which were created much prior to the incident in question, the learned Additional Sessions Judge was not at all justified in declining to de-freeze the fixed deposit accounts on the premise that the charge against the petitioner was grave. Resultantly, the impugned order cannot be sustained and, thus, deserves to be quashed and set aside.

17. Thus, the following order:

: O R D E R :

(i) The petition stands allowed in terms of prayer clause (a).

(ii) The impugned order dated 17th October, 2025 passed by the learned Additional Sessions Judge, Greater Mumbai, stands quashed and set aside.

(iii) The order of the Investigating Officer freezing the fixed deposit accounts described in prayer clause (a) also stands quashed and set aside.

(iv) Rule made absolute in the aforesaid terms.

[N. J. JAMADAR, J.]