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

CRIMINAL WRIT PETITION NO. 188 OF 2026
with
CRIMINAL WRIT PETITION NO. 227 OF 2026
with
CRIMINAL WRIT PETITION NO. 264 OF 2026
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CRIMINAL WRIT PETITION NO. 188 OF 2026

PETITIONER : Sakshi Food Suppliers,
through its Proprietor / Director,
Smt. Sudha Wamanrao Wankhede,
Aged about 37, Occu. Business,
R/o House No. 331, Rameshwari Road,
Near Kalpataru Buddha Vihar,
Kaushalya

VERSUS

RESPONDENTS : 1] State of Maharashtra,
through Police Station, Lakadganj,
Nagpur.

2] State Bank of India,
through its Manager,
S. V. Patel Marg, Kingsway Road,
Station Road, Nagpur.

3] IDFC First Bank,
through its Manager,
Byramji Town Branch,
Byramji Town, Nagpur.

With
CRIMINAL WRIT PETITION NO. 227 OF 2026

PETITIONER : Surbhi W/o Jayesh Shahu,
Aged about 32 years, Occu. Housewife,
R/o Plot no. T-2, 1302, Tata Capital Heights,
Near Medical Square, Ajni, Nagpur.

VERSUS

RESPONDENTS : 1] State of Maharashtra,
through Police Station, Lakadganj,
Nagpur.

2] ICIC Bank,
Through its Manager,
Zade Bhavan, Chhapru Nagar Square,
C.A. Road, Nagpur – 440 013.

3] IDFC First Bank,
through its Manager,
Byramji Town Branch,
Byramji Town, Nagpur.

With

CRIMINAL WRIT PETITION NO. 264 OF 2026

PETITIONER : Aditya Santosh Shahu,
Aged about 19 years, Occu. Student,
R/o Plot no. 271, Behind Pritam Complex,
Small Factory Area, Nagpur.
Presently at : Good Host Spaces, Manipal University, Jaipur, VPO Dehmi Kalan,
Tah. Sanganer, Off Jaipur-Ajmer Express,
Jaipur – 303007, Rajasthan.

VERSUS

RESPONDENTS : 1] State of Maharashtra,
through Police Station, Lakadganj,
Nagpur.

2] IDFC First Bank,
through its Manager,
Byramji Town Branch,
Byramji Town, Nagpur.

Mr. Sahil Dewani, Advocate for the petitioners.
Mrs. M. H. Deshmukh, A.P.P. for the respondent no.1/State.
Nobody appears for respondent nos.2 and 3.

CORAM : M. M. NERLIKAR, J.
DATE : APRIL 28, 2026

ORAL JUDGMENT :

1. Heard Mr. Sahil Dewani, learned counsel appearing for

the petitioners and Mrs. M. H. Deshmukh, learned Additional Public Prosecutor appearing for respondent no.1/State. Nobody appears for respondent nos.2 and 3.

2. Since, these three petitions arise out of the common order passed by the trial Court on the applications filed by the petitioners, they are being decided by this common judgment.

3. The petitioners are challenging the common order dated 22.12.2025 passed by the learned Judicial Magistrate, First Class, (Court No.3), Nagpur in Regular Criminal Case No. 2922/2025, whereby the respective applications (Exhs.40, 43, 28, 31 and 75) filed by the petitioners for de-freezing their bank accounts came to be rejected.

4. The learned counsel for the petitioners submits that the Investigating Officer by exercising powers under Section 94 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as “the BNSS” for short) directed the respondent-Bank to debit freeze the accounts of the petitioners. The learned counsel further submits that the powers under Section 94 of the BNSS cannot be exercised for debit freezing the bank account. In support of his

submission, he relied on the judgment of the Himachal Pradesh High Court in the case of ***Aeronfly International Private Limited Vs. State of Himachal Pradesh and others***, in ***Cr.MMO No. 533 of 2024***, decided on 04.09.2024, wherein it has been held that Section 94 of the BNSS cannot be exercised to debit freeze the bank accounts. He further submits that even the powers cannot be exercised under Section 106 of the BNSS and this issue has already been concluded by this Court in the case of ***Kartik Yogeshwar Chatur Vs. Union of India and others*** in ***Criminal Writ Petition No. 321 of 2025*** and batch of petitions, wherein the Division Bench of this Court by its order dated 20.11.2025 held that debit freezing of the bank accounts is not permissible under Section 106 of the BNSS. According to the learned counsel for the petitioners, the Investigating Officer ought to have exercised the power under Section 107 of the BNSS which he has failed to do so. The learned Magistrate has failed to take into consideration the relevant provisions of law and by coming to a wrong conclusion rejected the applications filed by the petitioners.

5. On the other hand, learned APP accepts the fact that the correspondence made by the Investigating Officer with the respondent-bank for debit freezing the accounts of the petitioners

was by exercising powers under Section 94 of the BNSS. She submits that the Investigating Officer had preferred an application (Exh.168) before the learned Magistrate for attachment of the bank accounts. However, at a later point of time, the said application was withdrawn by the I.O. with liberty to file fresh application. She further submits upon instructions from the IO that thereafter no fresh application was made before the learned Magistrate. She further submits that considering the huge amount siphoned by the petitioners, the petitions may not be allowed merely on a technical ground. She, therefore, prayed for dismissal of the petitions.

6. I have considered the rival submissions. Admittedly, various communications were made by the Investigating Officer with the bank for debit freezing the accounts of the petitioners. It appears from the record that the petitioners filed various applications vide Exhs. 40, 43, 28, 31 and 75 for de-freezing their accounts. However, by the impugned order, the said applications were rejected by the learned Magistrate holding that huge amount is involved in this crime and in such a situation, it would not be just and proper to de-freeze the bank accounts of the petitioners.

7. It is not in dispute that the Investigating Officer by exercising the powers under Section 94 of the BNSS had made correspondence with the bank for debit freezing the accounts of the petitioners. It appears on perusal of Section 94 of the BNSS that under the said Section, the Investigating Officer is empowered only to issue summons for production of documents or any other thing. The Investigating Officer is not vested with the power to direct the banks to debit freeze the accounts. It would be useful to refer to the observations of the Himachal Pradesh High Court in the case of ***Aeronfly International Pvt. Ltd.*** (supra) wherein in paragraph 14, the Court framed an issue - "Whether Cyber Cell could order debit freeze of the bank account of the petitioner-company under Section 91 of the Cr.P.C. or not ?" To answer the said issue/question, the Himachal Pradesh High Court in paragraph 25 has observed as under :

> *"25. Admittedly, in the case at hand. Cyber Cell, Kullu, straightaway, without ascertaining the factual position, issued notice to ICICI Bank, Kullu, to debit freeze the account of the petitioner-company that too by issuing notice under Section 91 Cr.P.C., which does not empower the Investigation Officer to order debit freeze of bank account. There is nothing to suggest that at any point of time, Cyber Cell approached competent Court of law under Section 102 Cr.P.C. for ordering freezement of the bank account of the petitioner and there is no order*

> *in that regard, if any passed by the Magistrate. Though, Mr. Rajan Kahol, learned Additional Advocate General, argued that there is procedural lapse, which can be ignored, but afore submission of learned Additional Advocate General is totally contrary to record. At no point of time, process, if any, ever came to be initiated at the behest of Investigating Officer to start process against accused under Section 102 Cr.P.C. rather, Investigating Officer itself without there being any authority of law proceeded to order debit freeze of the account of accused under Section 91 Cr.P.C. which was not permissible."*

8. In view of the above, it is crystal clear that the Investigating Officer cannot exercise power under Section 91 of the Cr.P.C. (Section 94 of the BNSS). It could be gathered from the impugned order that the Investigating Officer had filed an application (Exh.168) before the learned Magistrate for attachment of the bank accounts of the petitioners. However, at a later point of time the said application was withdrawn for the reasons best known to the IO. Though, liberty was granted to the investigating agency/IO to file fresh application under Section 107 of the BNSS, as per the submission of the learned APP, the IO has not taken pains to file fresh application.

9. It would be necessary to consider the provisions of Section 107 of the BNSS. On a bare perusal of Section 107 of the

BNSS it can be said that Section 107 is a Code in itself. Entire procedure has been laid down in the said Section for attachment of the property wherein even debit freezing of the bank account is also permissible. It would be useful to refer to the judgment of this Court in the case of ***Kartik Yogeshwar Chatur*** (supra), wherein in paragraph 10, the Division Bench has observed as under :

> *"10. Thus, the Kerala High Court, in clear terms, held that a police officer investigating a crime has to approach jurisdictional Magistrate under Section 107 of the BNSS to seek attachment of any property believed to be derived directly or indirectly from a criminal activity or commission of an offence. Subsequent course will have to be adopted in terms of order passed by the Magistrate. The Court further clarified that while Section 106 speaks of seizure, Section 107 deals with attachment, forfeiture and restoration. Seizure under Section 106 can be carried out by a police officer, and ex post facto report submitted to the Magistrate. On the other hand, attachment under Section 107 can be effected only upon order of the Magistrate. The logic behind this distinction being that the purpose of seizure is more to secure evidence during investigation, whereas, attachment is intended to secure proceeds of crime by preventing its disposal and, thus, ensuring its availability for legal procedure such as forfeiture and distribution to the victim/s."*

10. It is further to be noted that this Court in ***Kartik Yogeshwar Chatur*** (supra) has relied on the judgment of the Kerala High Court. While passing the order, it is informed to this

Court that the judgment of Kerala High Court was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court has declined to interfere with the said judgment, which means that the Judgment of the Kerala High Court has been confirmed by the Hon'ble Supreme Court, wherein it is held that it is only under Section 107 of the BNSS the order of debit freezing the bank account can be passed and not under Section 106 of the BNSS.

11. Considering the above exposition of law laid down by the Himachal Pradesh High Court as well as this Court, I am of the considered opinion that the Investigating Officer has committed gross error in exercising the powers under Section 94 of the BNSS for debit freezing the bank accounts of the petitioners. Even the learned Magistrate while passing the impugned order has lost sight of the fact that under Section 94 of the BNSS, debit freezing of bank account is not permissible. This settled position of law has been conveniently ignored by the learned Magistrate. The learned Magistrate also committed gross error by relying on Section 106 of the BNSS and holding that under said Section, the Investigating Officer has power of seizure/freezing the bank accounts.

12. Considering the above facts and circumstances, I am of the considered opinion that the impugned order cannot be sustained in law and it deserves to be quashed and set aside to the extent it rejects the applications (Exhs.40,43, 28, 31 and 75) filed by the petitioners.

13. Accordingly, the Writ Petitions are allowed. Hence, the following order

a) The impugned order dated 22.12.2025 passed by the learned Judicial Magistrate, First Class, (Court No.3), Nagpur in Regular Criminal Case No. 2922/2025 is quashed and set aside to the extent it rejects the applications (Exhs.40, 43, 28, 31 and 75) filed by the petitioners.

b) It is made clear that the Investigating Officer is at liberty to file application under Section 107 of the BNSS, if he so desires.

14. The writ petitions stand disposed of in the aforesaid terms.

(M. M. NERLIKAR, J.)

Diwale