IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 1699 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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DILIPKUMAR JITENDRA SHAH
Versus
STATE OF GUJARAT & 2 other(s)

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Appearance:
MR PM DAVE(263) for the Applicant(s) No. 1
DS AFF.NOT FILED (N) for the Respondent(s) No. 2
MR LAUKIK PANT WITH MR SIDDHANT K GUJARATHI AND MS. JANKI BHATT FOR NANAVATI ASSOCIATES(1375) for the Respondent(s) No. 2
NOTICE SERVED BY DS for the Respondent(s) No. 3
MS ASMITA PATEL, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 17/08/2023

ORAL JUDGMENT

1. By way of present petition, following reliefs are prayed :-

"(A) Admit this petition.

(B) Issue appropriate writ, order or direction upon respondent authorities to withdraw the instructions regarding sealing of the accounts of the petitioner and further petitioner may be allowed to operate different bank accounts and to make financial transactions in the interest of justice and equity.

(C) Grant interim relief and by way of interim order be pleased to allow the petitioner to operate the different bank accounts with Kalupur Bank as also Kalupur Bank Vadodara pending admission and final disposal of this petition.

(D) Pass such orders as thought fit in the interest of justice."

2. The case background is as under :-

2.1. On 14.12.2012, one Kanubhai Motibha Pargho in capacity of Liquidation Officer of Cambay Hindu Merchant Cooperative Bank Ltd., Khambhat lodged written complaint addressed to the Police Inspector, Khambhat Town Police Station against four persons which includes present petitioner for the offence under sections 406, 409, 420, 465, 467, 471, 477A, 120-B of Indian Penal Code. This written complaint came to be lodged as FIR being C.R.No.I-9 of 2012.

2.2. The petitioner herein was serving as Accountant in the Bank which later on merged with Kalupur Bank, Khambhat. According to FIR, huge financial scam took place in Cambay Hindu Merchant Cooperative Bank Ltd., Khambhat. It is alleged that along with other accused, petitioner has also played role in

commission of an offence. The petitioner is arraigned as an accused. He preferred Regular Bail application before this Court being Criminal Misc. Application No.18782 of 2015 and on 30.11.2015, this Court had released the petitioner on bail with condition that the petitioner shall deposit Rs. 11 lakhs before the Trial Court along with some other conditions.

2.3. During the investigation of an offence, Investigating Officer found incriminating material against the petitioner, therefore, under Section 102 of the Cr.P.C, he freezed bank account of the petitioner having C.C.Account No.273590043, held with Kalupur Bank at Khambhat. Action of the Investigating Officer to freeze bank account under Section 102 of Cr.P.C. has prompted the petitioner to approach this Court under Section 482 of the Cr.P.C. seeking above-stated relief.

3. Learned advocate Mr. P.M.Dave, having referred to documents on record, submits that by following order of this Court passed in bail application, the petitioner has deposited Rs.11 lakhs before the learned Trial Court. He would further submit that the petitioner has not played any role in commission of an offence. He would further submit that when FIR was lodged, the petitioner had already retired from services, after taking VRS. He would further submit that during the time period of his service, audit of the bank transaction took place but such transaction did not point out any illegality or irregularity in money transaction. The FIR is filed with device and design to harass the present petitioner. Apart from such submissions, he would submit that in view of Section 102 of Cr.P.C., Investigating Officer has not followed mandatory procedure as laid down in

Section 102 of Cr.P.C. After freezing bank account, he has not reported to the jurisdictional Magistrate Court. In view of such, action taken on the part of the Investigating Officer is bad in law, without jurisdiction and therefore, requires to be quashed and set aside. In support of his submission, he has relied on judgment of this Court in the case of **Trivendrakumar Somalal Bhandari Vs. State of Gujarat (Special Criminal Application No.5678 of 2021)** and in the case of **Hansaben w/o Sunilbhai Gulabsinh Padhiyar Vs. State of Gujarat (2021 (3) GLR 2328)**. Above submission is made to allow this petition.

4. On the other hand, learned APP, Ms. Asmita Patel, has submitted Report of Police Inspector, Khambhat which is ordered to be taken on record. Referring to this report, she would submit that huge financial scam has taken place, which has send Cambay Hindu Merchant Cooperative Bank Ltd., Khambhat into liquidation. Present petitioner is one of the main accused in commission of an offence. She would further submit that charge-sheet is already filed and trial is already pending before the Court concerned. She would further submit that trial of the offences are registered as Criminal Case Nos.1168 of 2015 and Criminal Case No.1049 of 2014 before the learned JMFC, Khambhat. She would further submit that whether provision under Section 102 of Cr.P.C. is followed or not, can be adjudicated before the Court concerned. She would further submit that since criminal cases are pending against the petitioner and other co-accused, it would be open for the jurisdictional Magistrate to decide the issue in context of the material available on record. This submission is canvassed with a view not to entertain this petition. Upon such submissions, she

would submit to dismiss this petition.

5. Having heard learned advocates for both the parties, at the outset, it is to be noted that undisputedably bank account of the petitioner has been freezed by the Investigating Officer in exercise of powers under Section 102 of Cr.P.C. It is alleged that Investigating Officer has not followed provisions of Section 102 of Cr.P.C., while taking exercise of freezing bank account. In order to understand this aspect, it is apt to refer Section 102 of Cr.P.C. which 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, 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."*

6. Sub-section (3) of section 102 of Cr.P.C., makes it manifestly clear that police officer is required to report seizure of the property to the Court having jurisdiction. The expression "every police officer" as well as "shall" appearing in sub-section (3) of section 102 of Cr.P.C. makes it mandatory in nature. Magistrate having jurisdiction should be reported as he shall be in domain of the property seized by the Investigating Officer.

The Investigating Officer cannot exercise powers under section 102 of Cr.P.C. without informing same to the learned Magistrate having jurisdiction. If police officer has acted in contravention of sub-section (3) of section 102 of Cr.P.C., it is manifestly erroneous act on the part of the Investigating Officer. It would not be termed as seizure as stated in section 102 of Cr.P.C. The unilateral act of the police officer seizing property under section 102 of Cr.P.C. without informing Magistrate having jurisdiction is arbitrary act and it is itself non-est act. Report of the Police Officer clearly indicates that after freezing bank account of the petitioner under section 102 of Cr.P.C., the Investigating Officer had not informed to the Magistrate having jurisdiction.

7. At this juncture, observation made by the Division Bench of Delhi High Court in the case of **Ms. Swaran Sabharwal v/s. Commissioner of Police [(1988) Cr.L.J. 241]** may be noted with profit which reads as under :-

> *"……in to the case of seizure of a bank account, the police officer should have done two things : he should have informed the concerned magistrate forthwith regarding the prohibitory order. He should have also give notice of the seizure to the petitioner and followed her to operate the bank account subject to her executing a bond undertaking to produce the amounts in court as and when required or to hold them subject to such orders as the court may make regarding the disposal of the same. This was not done. Even a copy of the prohibitory orders was not given to the petitioner. The police did not seek the directions of the Magistrate trying the offence. Not only that, when the petitioner herself approached the Magistrate who was trying the petitioner's husband under the official Secrets Act, her request to be allowed to operate the account was*

opposed by the police contending that the bank account was not "case property" and that the petitioner's remedies lay elsewhere than in the court of the Magistrate. The Magistrate accepted the plea of the police and dismissed the application of the petitioner and directed to seek remedy elsewhere before the appropriate authority. The petitioner having lost before the Magistrate, had no other recourse except to file a writ petition praying for the setting aside of the prohibitory order."

8. I may also refer to the decision of this Court in the case of **Paresha G. Shah v/s. State of Gujarat delivered in Special Criminal Application No.150 of 2015 decided on 15.06.2015,** whereby it is observed as under :-

"Like any other property a bank account is freezable. Freezing the account is an act in investigation. Like any other act, it commands and behoves secrecy to preserve the evidence. It does not deprive any person of his liberty or his property. It is necessarily temporary i.e. till the adequate material is collected. It clothes the authority with the power to preserve a property suspected to have been used in the commission of the offence in any manner. The property, therefore, requires to be protected from dissemination, depletion or destruction by any mode. Consequently, under the guise of being given information about the said action, no accused, not even a third party, can overreach the law under the umbrella of a sublime provision meant to protect the innocent and preserve his property. It is also not necessary at all that a person must be told that his bank account, which is suspected of having been used in the commission of an offence by himself or even by another, is being frozen to allow him to have it closed or to have its proceeds withdrawn or transferred upon such notice."

9. The Apex Court has also recognized power of Investigating Officer to freeze account under section 102 of Cr.P.C. In the case of **State of Maharashtra v/s. Tapas D. Neogy [(1999) 7 SCC**

685, the Apex Court has held that if circumstances exist in relation to bank account, then section 102(1) of the Code would be attracted empowering the police officer investigating the offence to seize the bank account and to issue orders prohibiting the account from being operated upon, if the property has direct links with the commission of offence for which the police officer is investigating. Thus, bank account of the accused or his relatives could be said to be property within the meaning of sub-section (1) of section 102 of the Code which could be seized. What requires for the police while freezing bank account or property having direct link with the commission of offence under sub-section (1) of section 102 of Cr.P.C. is required to be followed by informing jurisdictional Magistrate under sub-section (3) of section 102 of Cr.P.C.

10. Thus while accepting that Investigating Officer has power under section 102(1) of Cr.P.C. to freeze the bank account being property said to have link with commission of offence, Investigating Officer is required to follow procedure in toto i.e. to follow procedure sub-section (3) of section 102 of Cr.P.C. Admittedly, in this case, Investigating Officer has not followed procedure laid down in sub-section (3) of section 102 of Cr.P.C. Investigating Officer has tried to prove that amount which is lying in the bank account freezed by him has link with the commission of offence alleged against the petitioner. It is undeniable that allegation of huge financial scam which caused loss to Cambay Hindu Merchant Cooperative Bank Ltd., Khambhat is made in the FIR. However, the circumstances spells that Investigating Officer has committed breach of provisions of section 102(3) of Cr.P.C. Though freezing of bank

account by Investigating Officer is in contravention of the provision of law as such making act non-est but at the same time, it cannot be ruled out that amount lying in the bank account belongs to the petitioner is suspected of having link with the commission of offence.

11. In juxtaposition of above situation and for the foregoing reasons, this petition is allowed in terms of following order :-

ORDER

(1) The petitioner is directed to execute bond of amount equivalent to amount with accrued interest lying in CC Account No.273590043 with Kalupur Bank at Khambhat to the satisfaction of learned JMFC, Khambhat within 15 days from today.

(2) In the event of compliance of above on the part of the petitioner, the Investigating Officer shall inform bank concerned to de-freeze the bank account being CC Account No.273590043 with Kalupur Bank at Khambhat.

(3) Concerned learned JMFC, Khambhat is directed to expedite trial of Criminal Case No.1049 of 2014 and Criminal Case No.1168 of 2015 as early as possible and to decide the same preferably within nine months from the date of receipt of this order.

(4) Learned Principal District Judge, Anand is directed to monitor progress of trial of Criminal Case No.1049 of 2014 and Criminal Case No.1168 of 2015.

(J. C. DOSHI,J)

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