IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.790 OF 2024

Geeta Kampani ... Applicant
versus
1. The State of Maharashtra
2. Parag Vipin Shah … Respondents

WITH

CRIMINAL APPLICATION NO.191 OF 2024

Parag Shah … Applicant
versus
1. Geeta Kampani
2. The State of Maharashtra … Respondents

Mr. Sharan Jagtiani, Senior Advocate with Ms. Shraddha Achliya, Ms. Namita Maneshinde, for Applicant in APL 790 of 2024 and for Respondent No.1 in APL No.191 of 2024.
Mr. Sanjeev Kadam, Senior Advocate with Dr. Kshitija Wadatkar, Ms. Varsha Thorat, Mr. Vikrant Khare, Mr. Malay Mishra, Ms. Vidhi Shah, Ms. Khushi Patharia i/by M/s. Kshitija Wadatkar for Applicant in APL No.191 of 2024 and for Respondent No.2 in APL No.790 of 2024.
Mrs. R.S.Tendulkar, APP for State.
Mr. Uttam Mane, PI, Unit No.7, EOW, Mumbai, present.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 7 APRIL 2026
PRONOUNCED ON : 7 MAY 2026

JUDGMENT :

1. These Applications under Section 482 of the Code of Criminal Procedure, 1973 (the Code, 1973) assail the legality, propriety and correctness of the order dated 7 December 2023 passed by the learned Additional Chief Metropolitan Magistrate, 47th Court, Mumbai, albeit from a

diametricaly opposite perspective.

2. The Applicant in APL No.191 of 2024 – first informant, takes exception to the very de-freezing of the accounts of the accused, which were freezed by the IO under Section 102 of the Code, 1973. The Applicant in APL No.790 of 2024 – Accused No.2, calls in question the legality of the order to the extent of the condition to furnish a bank guarantee in the sum of Rs.6.55 Crores for the de-freezing of the accounts.

3. The Applications arise in the backdrop of the following facts :

3.1 Mr. Parag Shah – first informant and Respondent No.2 in APL No.790 of 2024, is the director of M/s. Kimaya Securities & Financial Services Pvt. Ltd., which is engaged in the business of stocks and commodities brokerage. The first informant had known late Pradeep Kampani (A1), husband of Ms. Geeta Kampani (A2) – Applicant in APL No.790 of 2024. Accused Nos.1 and 2 were investing in shares and stocks through the first informant. Over a period of time, the parties developed a bond of trust.

3.2 The first informant alleged, in the year 2011, while accused Nos.1 and 2 were going through the financial difficulties, the accused requested the first informant to lend them some of the stock holdings of the first informant for a period of six months. Accused Nos.1 and 2 had assured to pay interest @ 10% p.a. on the market value of the lent stocks and also return all the corporate benefits on such lent stocks.

3.3 Believing the representations and on account of the fiduciary relationship between the parties, the first informant claimed to have transferred various quantities of shares of several reputed companies to the Demat accounts of accused Nos.1 and 2 during the period 2011 to 2013 . To gain and retain the trust of the first informant, accused Nos.1 and 2 had initially paid certain amounts. Some of the lent shares were returned by accused Nos.1 and 2. However, accused Nos.1 and 2, later on, reneged from their promise and when the lent shares substantially appreciated, accused Nos.1 and 2 refused to return the balance shares.

3.4 As the first informant realized that the shares which were entrusted to accused Nos.1 and 2 were dealt with by the accused Nos.1 and 2, the first informant addressed legal notices to the accused, and, ultimately, lodged a report with the EOW, Unit No.9, which led to the registration of FIR No.39 of 2018 for the offences punishable under Sections 120B, 406, 420 read with Section 34 of the Indian Penal Code, 1860.

3.5 During the course of investigation, in the year 2018, the IO proceeded to freeze the accounts of accused Nos.1 and 2 maintained with HDFC Bank and the mutual funds units held by accused Nos.1 and 2 with the various Asset Management Companies.

3.6 The accused initially filed an application for de-freezing of the accounts on 9 September 2019. By an order dated 27 July 2021, the learned

Magistrate allowed the said application, subject to the condition of furnishing an indemnity bond in the sum of Rs.6 Crores.

3.7 Being aggrieved, the first informant preferred Revision Application No.324 of 2021. The said Revision Application came to be allowed by the learned Sessions Judge and the application for de-freezing of the accounts came to be remitted back to the learned Magistrate by an order dated 25 August 2021.

3.8 Post remand, after hearing the accused, the Investigating Agency and the first informant, by the impugned order dated 7 December 2023, the learned Magistrate was again persuaded to allow the application and de-freeze the accounts, subject to the condition that the accused shall furnish bank guarantee in the sum of Rs.6.55 Crores. Learned Magistrate was of the view that, since the investigation was complete and the charge-sheet was lodged and it was unlikely that the trial could conclude soon, further freezing of the accounts was not justifiable. It was further noted that, there was nothing on record to show that the IO had complied with the mandate of section 102(3) of the Code, 1973 of reporting the seizure to the Magistrate, and, therefore, the accounts were required to be de-freezed. Taking note of the conclusion drawn by the IO that, a wrongful loss was caused to the first informant to the tune of Rs.6.55 Crores, as articulated in the report under Section 173 of the Code, 1973, the learned Magistrate directed the accused

to furnish the bank guarantee to the tune of Rs.6.55 Crores.

3.9 Being aggrieved by the very order of de-freezing of the accounts, the first informant has preferred APL No.191 of 2024.

3.10 Being dissatisfied with the condition of furnishing bank guarantee, accused No.2 has preferred APL No.790 of 2024.

4. Respective applications were opposed by the accused No.2 and the first informant, by filing the affidavits in reply.

5. I have heard Mr. Sharan Jagtiani, learned Senior Advocate for accused No.2, Mr. Kadam, learned Senior Advocate for the first informant, and Mrs. Tendulkar, learned APP for the State, at some length. With the assistance of the learned Counsel for the parties, I have also perused the material on record, including the report submitted by the IO.

6. Mr. Jagtiani, learned Senior Advocate for the accused No.2, mounted multifold challenges to the impugned order to the extent it imposes condition of furnishing the bank guarantee. In the context of the challenge on behalf of the first informant to the very de-freezing of the accounts, Mr. Jagtiani would urge that the very direction to freeze the accounts issued by the IO was completely unlawful and unwarranted. The direction to freeze the accounts by the IO was beyond the power conferred on the IO by Section 102 of the Code, 1973. The foundation of the power to seize the property is the nexus of the seized property with the commission of the offences. It was incumbent upon

the IO to arrive at a satisfaction on the basis of objective material that there was nexus between the subject accounts and the alleged offences. In the case at hand, Mr. Jagtiani would urge, there was no remotest link between the alleged offences and the accounts which were frozen by the IO. Therefore, Mr. Jagtiani would urge, the very direction to freeze the accounts of the accused had no legal foundation.

7. To buttress these submissions, Mr. Jagtiani placed reliance on the decisions of the Supreme Court in the cases of **Shento Varghese V/s. Julfikar Husen and Ors.**[1], **Nevada Properties Pvt. Ltd. V/s. State of Maharashtra and Anr.**[2] and **M.T.Enrica Lexie and Anr. v/s. Doramma and Ors.**[3].

8. An endeavour was made by Mr Jagtiani to drive home the point that the reports of the IO filed in opposition to the prayer for de-freezing of the accounts, do indicate that the Investigating Agency was also aware that there was no such nexus, and, therefore, a contention was taken by the IO that the accounts be de-freezed subject to furnishing bank guarantee of Rs.11 Crores.

9. As a second limb of the aforesaid submission, Mr. Jagtiani would urge that, if the very freezing of the accounts was wholly unsustainable, there was no propriety in demanding the accused to furnish the bank guarantee in the sum of Rs.6.55 Crores. Mr. Jagtiani would urge that the learned Magistrate

1 (2024) 7 SCC 23
2 (2019) 20 SCC 119
3 (2012) 6 SCC 760

has categorically recorded that there was a complete non-compliance of the mandate contained in Section 102(3) of the Code. Adverting to the decision of the Supreme Court in the case of **Shento Varghese (supra)**, Mr. Jagtiani attempted to draw a distinction between the case of delayed reporting and the complete non-compliance of the requirement of reporting under Section 102(3) of the Code, 1973. Where there is a complete non-compliance of the said requirement, direction of freezing of the accounts cannot be sustained under any circumstances, submitted Mr. Jagtiani.

10. Two more submissions were canvassed by Mr. Jagtiani on the propriety of the continuation of freezing order. First, in view of the conclusion of the investigation and the filing of the chargesheet and awaiting adjudication of the guilt of the accused, the continuation of the seizure of the property was not at all necessary. Reliance was sought to be placed by Mr. Jagtiani on the judgment of the Supreme Court in the case of **Nevada Properties Pvt. Ltd. (supra)**, to lend support to this submission.

11. Second, Mr. Jagtiani laid emphasis on the nature of underlying transaction between the parties. Strenuous effort was made to demonstrate that the first informant has made an effort to give a criminal flavour to an otherwise civil dispute between the parties. Efforts made by the first informant to get the crime registered, despite a categorical opinion of the Investigating agency that the dispute was of civil nature, was sought to be pressed into

service by Mr. Jagtiani. In addition the first informant has instituted a suit for recovery of the allegedly diverted amounts and had also sought interim relief in the said suit. However, the application for interim relief was withdrawn by the first informant. Having failed to secure the favourable orders in a properly constituted civil proceeding, Mr. Jagtiani would urge, the first informant is making an undisguised attempt to deprive the accused of their property, which has no nexus with the alleged offences.

12. Mrs. Tendulkar, learned APP, resisted the submissions on behalf of the accused. Consistent with the stand of the Investigating Agency that the accused have defrauded the first informant, the learned APP prayed for setting aside of the order of de-freezing of the accounts of the accused.

13. Mr. Kadam, learned Senior Advocate for the first informant, stoutly countered the submissions on behalf of the accused. Mr. Kadam took the court through the documents annexed with the charge-sheet to forcefully refute the submissions on behalf of the accused that there was no nexus between the freezed accounts and the alleged offences. Mr. Kadam submitted that, if the investigating agency after a thorough investigation has arrived at the conclusion that the first informant has been defrauded and the amount standing to the credit of the freezed accounts represents the proceeds of the crime, then at this juncture, it cannot be said that there was no nexus between the freezed accounts and the alleged offences.

14. Mr. Kadam submitted that, at this stage, the opinion of the IO in regard to the character of the property freezed by the IO deserves weightage. To bolster up the aforesaid submission, Mr. Kadam placed a very strong reliance on the judgment of the Supreme Court in the case of **Teesta Atul Setalvad V/s. State of Gujarat**[4].

15. Mr. Kadam would urge that the fact that the first informant had transferred the stocks to the Demat accounts of the accused is borne out by the record. Once there is a prima facie material to show that there was wrongful loss to the first informant and the accused failed to offer cogent explanation, the freezing of the property is absolutely justified, lest the amount which the first informant has been defrauded, would not be recovered even if the accused are ultimately found guilty of the offences. In a situation of the present nature, Mr. Kadam would urge, the seized property deserves to be secured till the conclusion of the trial. If the accused are permitted to deal with the property in the freezed accounts, the first informant would be left in the lurch, submitted Mr. Kadam.

16. Before adverting to deal with the aforesaid rival submissions, it is necessary to note that the first informant has tendered before the Court, the certified copies of the report purportedly submitted by the IO, EOW, Unit No.9 on 10 May 2018 and 24 May 2018, reporting seizure of the freezing of the

4 (2018) 2 SCC 372

accounts of the accused under Section 102 of the Code, 1973. The certified copies do reveal that the learned Magistrate had made an endorsement on the said report of having seen them.

17. At this juncture, as the certified copies of the reports were tendered before the Court, after the applications were heard and closed for orders, this Court considers it appropriate to proceed on the premise that the IO had reported the freezing of the accounts to the jurisdictional Magistrate on the dates, as is evident from the endorsement of the learned Magistrate. Indeed, the learned Magistrate while passing the impugned order had taken note of the fact that the IO had not complied with the mandate of Section 102(3) of the Code and that factor weighed with the learned Magistrate. However, this Court is of the view that, having regard to the history of remand of the matter to the learned Magistrate and two orders already passed by the learned Magistrate, it would be appropriate to decide these applications on the substance of the matter, namely, whether the IO was justified in directing the freezing of the accounts of the accused and whether the continuation of the freezing of the accounts of the accused is warranted ?

18. Chapter VII of the Code, 1973 contained various provisions to equip the police to carry out an effective investigation, under the caption “Processes to compel the production of things”. Part D of Chapter VII contained fasciculus of the provisions under the head “Miscellaneous”. Section 102 deals with the

power of police officer to seize certain property. It read as under :

> **“102. Power of police officer to seize certain property.** - (1) 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.
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> [(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, [or where there is difficulty in securing proper accommodation for the custody of such property, or where the continue retention of the property in police custody may not be considered necessary for the purpose of investigation], 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.]
>
> [Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of Sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.]”

19. The phraseology of sub-section (1) of Section 102 makes it abundantly

clear that the police officer is empowered to seize the property if it meets the specified character. First, such property is either alleged or suspected to have been stolen. Second, such property is found under circumstances which create suspension of the commission of any offence. It implies that the legislature has not conferred the general power to seize the property of whatever description and found under whichever circumstances in relation to the persons who are privy to the crime. Nor the IO is empowered to seize any property of the person who is alleged to be involved in or suspected to have committed any offence. Emphasis is, thus, on the character of the property rather than its association with the accused or for that matter, the first informant / victim.

20. In the case of **State of Maharashtra V/s. Tapas D. Neogy**[5], the Supreme Court considered the question whether the police officer investigating an offence can issue prohibitory order in respect of the bank account of the accused in exercise of the power u/s 102 of the Code ?

21. While answering the question in the affirmative to the effect that the bank account of the accused or any of his relations is “property” within the meaning of Section 102 of the Code and a police officer in the 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

5 (1999) 7 SCC 685

police officer is investigating into, the Supreme Court expounded the nature of the power under Section 102. It was in terms observed that, two pre-conditions for applicability of Section 102(1) are that, firstly, it must be 'property' and secondly, in respect of the said property, there must be suspicion or commission of any offence. The Supreme Court emphasised that the police officer can seize or prohibit operation of the bank account if such assets have direct link with the commission of the offence.

22. In the case of **M.T.Enrica Lexie and Anr. (supra)**, the Supreme Court enunciated in clear and explicit terms that the 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.

23. In the case of **Nevada Properties Pvt. Ltd. (supra)**, a three-judge Bench of the Supreme Court considered the question whether the expression "any property" used in sub-section (1) of section 102, includes an immovable property. The Supreme Court after an elaborate analysis of the provisions and the previous judicial precedents, answered the reference by holding that, the power of a police officer under Section 102 of the Code, to seize any property which may be found under circumstances that create suspicion of the commission of any offence, would not include the power to attach, seize and seal an immovable property. In the process, the Supreme Court

expounded the scope and object of Section 102.

24. The observations in paras 30 and 31 are instructive, and, hence, extracted below :

> "30. Equally important, for the purpose of interpretation is the scope and object of Section 102 of the Code, which is to help and assist investigation and to enable the police officer to collect and collate evidence to be produced to prove the charge complained of and set up in the charge sheet. The Section is a part of the provisions concerning investigation undertaken by the police officer. After the charge sheet is filed, the prosecution leads and produces evidence to secure conviction. Section 102 is not, per se, an enabling provision by which the police officer acts to seize the property to do justice and to hand over the property to a person whom the police officer feels is the rightful and true owner. This is clear from the objective behind Section 102, use of the words in the Section and the scope and ambit of the power conferred on the Criminal Court vide Sections 451 to 459 of the Code.
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> 31. The expression 'circumstances which create suspicion of the commission of any offence' in Section 102 does not refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not 'any property' is required to be seized. The word 'suspicion' is a weaker and a broader expression than 'reasonable belief' or 'satisfaction'. The police officer is an investigator and not an adjudicator or a decision maker. This is the reason why the Ordinance was enacted to deal with attachment of money and immovable properties in cases of scheduled offences."

(emphasis supplied)

25. In view of the fact that there is material to show that the IO had reported the freezing of the accounts of the accused, reference to the enunciation of law on the aspect of effect of non-complaince or delayed compliance of Section 102 (3) in the case of **Shento Varghese (supra)**, may not be warranted. Nonetheless, the decision in the case of **Shento Varghese (supra)**, assumes significance as it underscores the grounds on which the exercise of the power under Section 102 of the Code, can be legitimately assailed. It was postualted that, the power exercised under Section 102(1) is not dependent on the compliance with the duty prescribed on the police officer under Section 102(3). The validity of the exercise of power under Section 102(1) Cr.P.C., can be questioned either on jurisdictional grounds or on the merits of the matter. The order of seizure can be challenged on the ground that the seizing officer lacked jurisdiction to act under Section 102(1) Cr.P.C. or that the seized item does not satisfy the definition of 'property' or on the ground that the property which was seized could not have given rise to suspicion concerning the commission of a crime, in order for the authorities to justify the seizure.

26. The Supreme Court again reiterated that the pre-requisites for exercising powers under Section 102(1) is the existence of a direct link between the tainted property and the alleged offence. It is essential that the

properties sought to be seized under Section 102(1) of the Cr.P.C. must have a direct or close link with the commission of offence in question.

27. The legal position which thus emerges is that, though the text of Section 102(1) uses the expression “any property” which the Police Officer can/may seize, yet the power to seize the property stems from the expressions which follow, namely, “the allegation or suspicion that such property is stolen” or “it is found in a circumstances which creates suspicion of commission of any offence”. There ought to be a direct link between the property which is seized and the offence which is alleged to have been committed. In other words, the nexus between the seized property and the commission of the alleged offence ought to be objectively evident during the course of investigation and the investigating officer ought to have grounds to entertain a suspicion that an offence is committed in relation to such property.

28. The principles which thus emerge in regard to the seizure of the property by the police officer under Section 102 can be summarized as under :

(i) Section 102 is a part of the provisions falling in the province of investigation by the police.

(ii) The object of the said provision is to assist the investigator and enable him to collect and collate the evidence to be tendered before the Court in proof of the charge against the accused.

(iii) The property which may be seized by the Police Officer includes, “bank accounts and Demat accounts”, but the power does not extend to seizure and sealing of an immovable property.

(iv) The emphasis is on the character of property rather than its association with the persons privy to the crime.

(v) Only the property which is alleged or suspected to be stolen or which is found in the circumstances which create suspicion of the comission of any offence, may be seized.

(vi) The pre-condition for exercise of power under Section 102 (1) is the existence of direct link between the seized property and the alleged offence.

(vii) A property not suspected of commission of the offence, which is being investigated by the Police Officer, cannot be seized.

(viii) Section 102 does not enable the police to seize the property, with a view to do justice and hand it over to the person whom they believe to be legitimately entitled thereto.

(ix) The order of seizure can be challenged on the ground that the officer who effected the seizure lacked jurisdiction to act under Section 102(2) or that seized article does not satisfy the definition of, “property” or on the ground that the property which was seized could not have given rise to suspicion concerning the commission of the

offence.

29. Having considered the position in law, reverting to the facts of the case, first and foremost, it is imperative to note the nature of the allegations against the accused. The gravamen of indictment against the accused is that the first informant, on the representations of accused Nos.1 and 2 had purportedly lent the stocks for a short term of six months. Accused Nos.1 and 2 had agreed to pay interest on the value of the stocks so lent at the rate of 10% p.a.. Accused Nos.1 and 2 had also agreed to return all the corporate benefits on such lent stocks. Allegedly, the said arrangement of lending of the shares continued during the period 2011 to 2013. Shares were duly transferred to the demat accounts of the accused. First informant alleges, accused did make some payment and also returned part of the stocks so lent. However, later on, accused refused to refund the stocks and failed to pay return thereon, as agreed, and, eventually, dealt with those stocks as if they were the holders thereof.

30. It would be contextually relevant to note that the accused Nos.1 and 2 have a competing counter version. The stocks were indeed sold to accused Nos.1 and 2 as they had been dealing with the first informant since long. Consideration was paid vide cheques and in cash. The stocks did not fare well, as promised by the first informant, and, thus, differences arose between the parties. Only a sum of Rs.10,74,534/- was due and payable, and the said

amount has also been deposited with the Court.

31. The matter is in the realm of allegations and counter allegations. Which of these versions is true ? Whether the acts and conduct attributed to the accused would amount to cheating in the sense that there was deceit coupled with an injury or the accused committed criminal breach of trust, in respect of the alleged lent shares ? Whether the intention of the accused was dishonest since the inception of the transaction ? Or was there an entrustment of the property with the accused Nos.1 and 2 and the latter acted in breach of the contract between the parties, touching the discharge of such trust ?, are all matters for adjudication at the trial.

32. At this juncture, it is also necessary to note that the property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is also designated as “stolen property” under Section 410 of the Penal Code. Thus, in the context of the provisions contained in Section 102 of the Code, it has to be seen whether the IO had material to form an opinion that the property contained in the freezed accounts was alleged or suspected to have been stolen or it was found under such circumstances which created suspension of the commission of an offence. The nature of property in the shares also assumes salience.

33. Under Section 44 of the Companies Act, 2013 (“the Act, 2013”), the shares or debentures or other interest of any member in a company shall be

movable property transferable in the manner provided by the articles of the company. Sub-section (1) of Section 46 of the Act, 2013 declares that a certificate issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, specifying the shares held by any person, shall be *prima facie* evidence of the title of the person to such shares. Sub-section (4) of Section 46 further provides that where a share is held in depository form, the record of the depositary is the *prima facie* evidence of the interest of the beneficial owner.

34. In the light of the aforesaid provisions, if the shares were transferred to the Demat accounts of Accused Nos. 1 and 2, it would be for the prosecution to dislodge the presumption of beneficial ownership contained in Section 46 of the Act, 2013. Thus, the real nature of the transaction between the first informant and Accused Nos. 1 and 2 in respect of the shares which were transferred to the Demat account of Accused Nos. 1 and 2 would be at the heart of the controversy.

35. What IO has seized is the amount in the bank accounts, and the mutual fund units standing to the credit of the accounts of accused Nos.1 and 2, with various asset management companies. The shares which were allegedly lent have not been seized. That brings to the fore the question of nexus of the seized accounts and the mutual funds with the commission of the alleged offences.

36. From the perusal of the documents annexed to the Report under Section 173 of the Code, it prima facie appears that, some of the mutual funds accounts were opened and the units thereunder were acquired much prior to the transactions in question between the first informant and the accused. Conversely, the trail of the sale proceeds of the allegedly lent shares to the amount standing to the credit of the accounts of the accused and the mutual fund units, is again a matter of proof. It appears that the IO proceeded to seize the accounts and mutual funds units swayed by the allegations that the accused Nos.1 and 2 had defrauded the first informant. Prima facie, the material on record does not establish the necessary nexus between the freezed property and the commission of the alleged offences.

37. At this stage, the object and purpose of the provisions contained in section 102 of the Code, deserve to be revisited. It is essentially a tool for investigation and collection of evidence to sustain the charge against the accused. Section 102 is neither intended to confer, nor a repository of, the power to seize the property for the purpose of its delivery to the person / victim whom the IO consider to be rightful owner. In the absence of a direct link between the seized property and the commission of the offences, to concede the power to the investigating agency to seize the property would amount to allowing the investigating agency to trench upon adjudicatory province and do compensatory justice.

38. The well recognized principles that the criminal proceedings are not for realization of the disputed dues and the criminal court is not expected to act as a recovery agent to realize the dues of the complainant, particularly without trial, also come into play.

39. The submission of the learned APP and Mr. Kadam that if the accounts are de-freezed, the accused No.2 would deal with the property, and, eventually, the first informant would be left in the lurch, even if the guilt of the accused is established, in the considered view of this Court, does not merit acceptance as it seeks to draw support and sustenance from the broad proposition that the interest of the first informant deserves to be secured. Absent the nexus and direct link between the seized property and the commission of the alleged offences, the seizure would partake the character of detaining the property of the accused awaiting adjudication of the guilt. If this argument is acceded to, then *de hors* the connection between the property and the commission of the alleged offences, any property of the accused could be seized, completely negating the principle of presumption of innocence.

40. Another factor which is of material significance, in the facts of the case at hand is, the institution of the suit by the first informant against the accused. As noted above, the Notice of Motion seeking interim relief was filed in the said suit and the first informant had withdrawn the said Notice of Motion on 3

February 2020. If the freezing of the accounts is allowed to continue till the conclusion of the trial, it would amount to an order of attachment before judgment without the first informant satisfying the strict rigour, which could sustain such a measure, despite having chosen to withdraw the Notice of Motion seeking interim reliefs.

41. Reliance placed by Mr. Kadam on the judgment of the Supreme Court in the case of **Teesta Atul Setalvad (supra),** appears to be inapposite in the facts of the case at hand. In the said case, while upholding the order of freezing of the bank accounts pending investigation, the Supreme Court observed that, the suspicion entertained by the investigating agency as to how the appellants therein appropriated huge funds, which, in fact, were the amount to be disbursed to the unfortunate victims of 2002 riots, would have to be explained by the Appellants. Further, once the investigation is complete and the police report is submitted to the court concerned, the Supreme Court observed, it would be open to the appellants to apply for the de-freezing of the bank accounts and persuade the court concerned that the said bank accounts were no more necessary for the purpose of investigation, as provided under sub-section (3) of Section 102 of the Code. The fact-situation at hand is completely different.

42. The conspectus of aforesaid consideration is that the order of de-freezing of the bank accounts passed by the learned Magistrate appears to be

justifiable. The necessary nexus between the freezed accounts and the mutual funds and the commission of the alleged offences does not seem to have been prima facie established. In such a situation, directing the accused to furnish the bank guarantee in the sum of Rs.6.55 Crores appeared to be a device to err on the side of safety rather than pursue the logical end. A direction to a party to furnish bank guarantee of an equivalent amount virtually amounts to denial of the prayer to de-freez the accounts. The trial court having came to the conclusion that, there was no nexus between the seized property and the commission of the alleged offences, and no likelihood of the conclusion of the trial within a reasonable period, ought to have directed de-freezing of the accounts by imposing reasonable conditions. An onerous condition of furnishing bank guarantee in the sum of Rs.6.55 Crores could not have been imposed, as it frustrated the object of de-freezing the accounts.

43. Resultantly, the application preferred by the first informant deserves to be dismissed and the application prefered by Accused No.2 deserves to allowed, to the extent of modification of the condition, subject to which the accounts be de-freezed. In the totality of the circumstances, a direction to de-freeze the accounts subject to the accused No.2 furnishing an indemnity bond in the sum of Rs.6.55 Crores to bring back the said amount along with interest at such rate as may be directed by the Court, would meet the ends of justice.

44. Hence, the following order :

ORDER

(i) Criminal Application No.191 of 2024 stands rejected.

(ii) Criminal Application No.790 of 2024 stands allowed.

(iii) The impugned order stands modified, as under :

“The saving bank accounts and the mutual funds mentioned in the impugned order be de-freezed, subject to accused No.2 - applicant in APL No.790 of 2024, furnishing an indemnity bond in the sum of Rs.6.55 Crores to bring back the said amount along with interest at such rate, as may be directed by the Court at the conclusion of the trial arising out of EOW C.R.No.39 of 2018.

(N.J.JAMADAR, J.)

At this stage, the learned Counsel for Applicant in Application No.191 of 2024 seeks continuation of interim relief, which has been in operation during the pendency of these Applications.

In view of the ensuing summer vacation, interim relief granted by this Court shall continue to operate for a period of six weeks from today.

(N.J.JAMADAR, J.)