

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 30TH DAY OF AUGUST, 2021

BEFORE

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

WRIT PETITION NO.226989/2020 (GM-RES)

Between:

Sri Narayan Yadav
C/o Rambir Yadav,
Aged about 30 years,
R/o B-75, Patel Gardens,
Uttam Nagar, Near Dwarka Hospitals,
D.K.Mohan Gardens, Uttam Nagar,
West Delhi, Delhi - 110059.

... Petitioner

**(By Sri S.Manoj Kumar and
Sri Anilkumar, Advocates)**

And:

1. State of Karnataka
Through CEN Police Station, Yadgiri,
Shahapur, Yadgir,
Karnataka - 585 223.
Represented by Police Inspector.
2. MS.Ludra Mary,
D/o Jamesh Poul,
Aged about 30 years,
Primary Arogya Centre, Hatigudur,

Shahapur, Yadgir,
Karnataka - 585 223.

... Respondents

**(By Sri Mallikarjun Sahukar, HCGP R1;
R2 - served)**

This petition is filed under Article 226 and 227 of Constitution of India read with Section 482 of Code of Criminal Procedure praying to quash the notice dated 22.06.2020 bearing No.08/CEN/PS/2020 passed by the respondent No.1 to Axis Bank directing to freeze the petitioner's bank account bearing No.27801010006117 as per Annexure-A and other linked and connected accounts and direct the petitioners bank to unfreeze the petitioner all Bank accounts and to pass any other appropriate orders.

This petition coming on for Hearing this day, the Court made the following.

ORDER

Notice issued to respondent No.2 is served, but respondent No.2 is not represented.

2. In this writ petition the petitioner has sought to quash the notice dated 22.06.2020 at Annexure-A issued by the Police Inspector, CEN Police Station, Yadgiri, to the Manager of Axis Bank, Yadgiri for de-freezing petitioner's account No.278010100061117 and linked account numbers.

3. The request at Annexure-A by the Police Inspector, appears to be in connection with an investigation relating to Crime No.4/2020 of Yadgiri CEN Police Station which was registered on a complaint lodged by respondent No.2.

4. The gist of the complaint is that, complainant received a mail on 27.05.2020 stating that she has won ₹48,47,80,346/- lottery and to transfer the said amount, she has to login to certain user ID. Accordingly, she entered the password and the user name provided and filled-up the information requested. In response, she was asked to deposit certain amount to the account numbers provided. As such, between 06.05.2020 to 10.06.2020, a total sum of ₹3,73,899/- was deposited to those accounts. Thereafter, no amount as assured was transferred to her account and thereby she was cheated by some unknown persons.

5. The notice at Annexure-A to defreeze the bank account pertaining to the petitioner appears to be on the

ground that transaction of ₹99,999/- made by the complainant to the Axis Bank account bearing No.278010100061117, belong to the petitioner.

6. It is the contention of the learned counsel for the petitioner that the petitioner is running Chain Electronics Stores in Delhi. The proceeds of the business were transferred to the premium company account that was maintained at Axis Bank, Dwarka Branch, Delhi. It is submitted that the petitioner was taken by surprise on receiving an intimation from Axis Bank that his account has been frozen and no debit card transactions can take place, which is certainly on the basis of the complaint lodged by respondent No.2. It is submitted that revised notice is also issued ordering for a complete freezing of petitioner's current account and to freeze all the linked accounts.

7. It is also contended that the petitioner is nowhere involved in the crime that has been alleged and freezing of the account of the petitioner, both business and

personal has severely affected the livelihood of the petitioner and he is unable to make ends meet as he has no alternative source to meet his financial obligations.

8. The learned counsel for petitioner has further contended that the petitioner is carrying out a legitimate business and he is able to justify each credit transaction that has taken place and therefore the freezing of petitioner's account, without following due procedure, is wholly arbitrary.

9. The learned counsel for petitioner has also contended that Crime No.4/2020 was registered by the respondent/police on 29.06.2020 and even prior to registration of the case, as per the endorsement in the notice, the concerned bank has been intimated to freeze petitioner's bank account on 22.06.2020. He submits that the freezing of account by respondent No.1 without informing the petitioner and without affording him an opportunity is in violation of the principles of natural

justice and also in violation of his fundamental rights under Article 21 of the Constitution of India.

10. In support of his contention, the learned counsel for the petitioner has relied on the following decisions :-

- i. Mr.Prakash Padukone and others vs. State of Karnataka
[W.P.No.13516-13518/2018 (GM-POLICE) - 4.04.2018];
- ii. Smt.Neeta Shanthilai vs. State of Karnataka
[Crl.Pet.No.5847/2016 - 18.08.2016];
- iii. Uma Maheshwari v. The State, Rep. by The Inspector of Police, Central Crime Branch, Egmore, Chennai
Criminal O.P.Nos.15467 of 2013 and connected matters dated 20.12.2013].

11. The learned High Court Government Pleader would contend that as per complaint averments complainant was asked to deposit certain amount and a sum of ₹99,999/- was deposited in the Axis Bank account belonging to the petitioner. He contends that the statement of accounts clearly disclose that the said amount has been deposited on 26.05.2020 in the said

account belonging to the petitioner. He therefore contends that it was necessary for the Investigating Agency to freeze the accounts belonging to the petitioner for the purpose of investigation and also to avoid the petitioner transacting further. He submits there is nexus between the accused, petitioner and the fraud committed against the complainant and therefore seeks to dismiss the petition.

12. As per Annexure-A the bank account No.278010100061117 and the linked account numbers belonging to the petitioner have been frozen. From the material on record, it can be seen that the said notice was issued in connection with the fraud alleged to have been committed against respondent No.2 wherein she is duped of ₹3,73,899/- by some unknown person. Since a sum of ₹99,999/- was found deposited in the Axis Bank account belonging to the petitioner, the said account as well as the other linked accounts appears to have been frozen at the request of the Investigating Officer.

13. In '**Smt.Neeta Shanthilal**' (supra) in a similar circumstance, this Court has observed that such a freezing of bank accounts is unfair and unjust.

14. In '**Prakash Padukone**', (supra) it is observed as under -

"This court is of the firm opinion that unless and until there is a strong suspicion against the petitioners, the police would not be justified in freezing the account belonging to the petitioners. For, such freezing of account adversely affects the right to life under Article 21 of Constitution of India. But, in order to balance the conflicting interest of the petitioners, with the interest of the Investigating Agency, and the interest of the complainant, in the interest of justice, respondent Nos.1 and 2 are directed to de-freeze the account belonging to the petitioners, provided, the petitioner No.1 submits a bond of ₹20,00,000/- (Rupees Twenty Lakh only) before the learned Sessions Judge, before whom the present case is pending."

15. It is also contended by the learned counsel for petitioner that Section 102 of Code of Criminal Procedure, which is mandatory, has not been followed while freezing the bank account. He has relied on the decision in '**Uma**

Maheswari' (supra), disposed of on 20.12.2013 by the High Court Judicature at Madras. Para 40 to 45 are extracted hereunder -

"40. In VINOSHKUMAR RAMACHANDRAN VALLUVAR VS. THE STATE OF MAHARASHTRA [2011 (1) MWN (Cr.) 497 (FB)(Bom.)], a Full Bench of the Bombay High Court held that the requirement of reporting of freezing of bank account to the Magistrate prescribed under Section 102(3) Cr.P.C is mandatory in nature.

41. In pursuing investigation under Section 102 Cr.P.C., the Code empowered the police officers to deprive a person of his properties. In this context, the phrase, "shall" employed in Section 102(3) Cr.P.C, is held to be mandatory in nature. Violation of it goes to the root of the matter.

42. In K.MAHENDRAN Vs. STATE REP. BY THE SUB INSPECTOR OF POLICE, XII TEAM, CENTRAL CRIME BRANCH, CHENNAI, [2007 (1) MLJ (CrI) 794], cited by the learned Senior Counsel for the petitioner, a learned Single Judge of this Court referring to section 105(E)(2) Cr.P.C. held that the freezing of the Bank accounts will have no effect unless it is confirmed by the Magistrate within 30 days of freezing of the Bank account.

43. The said Section 105(E) occurs in Chapter VII-A of the Cr.P.C. The said Chapter consisting of Section 105(A) to 105(L) was inserted in the Code of Criminal Procedure on 20.7.1994 by way of Central Act 14/1993. It is intended by way of reciprocal arrangement for assistance in certain matters and procedures for attachment or forfeiture of the property. With regard to certain extra-territorial activity, in other words it is intended for collecting evidence outside India and matters connected thereto in India elaborate

procedure has been made in Section 105(A) to 105(L) Cr.P.C. In that connection in Section 105(E)(2) Cr.P.C. confirmation within 30 days of seizure has been prescribed. Section 105(E) Cr.P.C. has nothing to do with the seizure provided in Section 102 Cr.P.C. Our case is covered under Section 102 Cr.P.C. Let us focus our attention only on Section 102 Cr.P.C.

44. The Investigation Officer has suspected that the moneys swindled were secreted by the accused persons in their Bank accounts. Thus, he took steps to freeze the Bank accounts.

45. We have elaborately seen that such freezing of the Bank accounts shall be reported to the jurisdiction Magistrate. When it is to be reported has been stated in Section 102(3) Cr.P.C. It is stated therein that it shall be reported "forthwith" to the jurisdiction Magistrate. The reporting of the freezing of the Bank accounts is mandatory. Failure to do so will vitiate the freezing of the bank account. In this back drop of the matter, the word "forthwith" shall mean 'immediately', 'without delay', 'soon'."

16. It is the contention that the freezing of bank account of the petitioner was not reported forthwith to the jurisdictional Magistrate, which is mandatory.

17. It is not in dispute that all the four bank accounts of the petitioner have been freezed by virtue of the notice issued by the Investigating officer. Certainly such freezing of account would adversely affect his right to

life under Article 21 of the Constitution of India. According to the complaint, she was duped of ₹3,73,899/- and it is alleged that a sum of ₹99,999/- was deposited in the Axis bank Account No.278010100061117 of the petitioner. The petitioner has undertaken to offer sufficient bank guarantee and also to abide by conditions. Hence, to meet the ends of justice, the respondent No.1 is directed to intimate the concerned banks to defreeze the accounts, provided the petitioner offering a bank guarantee for a sum of ₹3,73,899/-. Petitioner shall make himself available for the purpose of investigation whenever required.

18. Petition is allowed in the above terms. No order as to costs. I.A-1/2021 is disposed of.

**Sd/-
JUDGE**

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