

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 6th OF DECEMBER, 2022

WRIT PETITION NO. 784 of 2014

BETWEEN:-

**RAMESHWAR ALIAS BALLI S/O PHOOL
SINGH LODHI, AGED ABOUT 27 YEARS,
OCCUPATION AGRICULTURE, R/O
LAKHANPUR, TEHSIL DATIA, DISTRICT-
DATIA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI S.S. RAWAT – ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH
THROUGH PRINCIPAL SECRETARY,
COOPERATIVE, BALLABH BHAWAN,
BHOPAL (MADHYA PRADESH)**
- 2. COLLECTOR, DISTRICT DATIA
(MADHYA PRADESH)**
- 3. MANAGER, DISTRICT COOPERATIVE
CENTRAL BANK, MARYADIT BANK,
BRANCH BASAI, DISTRICT DATIA
(MADHYA PRADESH)**
- 4. TEHSILDAR/UPPER TEHSILDAR,
CIRCLE-BASAI, DISTRICT DATIA
(MADHYA PRADESH)**
- 5. STATION HOUSE OFFICER/POLICE
STATION INCHARGE POLICE STATION
BASAI, DISTRICT DATIA (MADHYA
PRADESH)**
- 6. SURESH CHANDRA CHOURASIA, S/O**

SHYAM BABU CHAURASIA, AGED ABOUT 50 YEARS, SAMITI PRABANDHAK, NAYA KHEDA, JILA SAHKARI KENDRIYA BANK MARYADIT, BRANCH BASAI, THANA BASAI, DISTRICT- DATIA (MADHYA PRADESH)

.....RESPONDENTS

(SHRI S.K. SHARMA – GOVERNMENT ADVOCATE FOR RESPONDENTS NO. 1,2 4 &5/STATE AND SHRI D.P. SINGH- ADVOCATE FOR RESPONDENT NO.3)

This petition coming on for hearing this day, the Court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking following reliefs :-

“7.1 That, the impugned order annexure P-1 passed by respondent no. 4 may kindly be set aside.

7.2 That, the relevant respondent authority may kindly be directed to provide penal interest to the petitioner and conduct the inquiry against the erring officials and punish his suitably as per law within in a stipulated period of one month.

7.3 That, any other relief justice into the matter including cost of petition advocate fee etc. may also kindly be awarded to the petitioner in the interest of justice.

7.4 That, in view of the annexure P-5 to P-9, the impugned order passed by the Station House Officer, Basai, District Datia, Annexure P-6, dt. 13/03/2014 / 22/03/2014, is liable to be set-aside & be set-aside.”

2. It is submitted by the counsel for the petitioner that Upper Tahsildar, Tahsil & District – Datia (M.P.) by order dated 06/05/2013 issued a restraint order thereby directing respondent No.3 to freeze the account of the petitioner. By order dated 13/03/2014, the said order was

withdrawn by Naib Tahsildar, Circle- Basai, Tahsil & District- Datia (M.P.) on the instruction of Collector, Datia (M.P.). Thereafter, SHO Police Station- Basai, Tahsil & District- Datia (M.P.) also directed respondent No.3 to freeze the account of the petitioner. Thereafter, by letter dated 03/02/2017, the SHO Police Station- Basai, Tahsil & District- Datia (M.P.) informed the Collector, District- Datia (M.P.) that supplementary charge-sheet has been filed against the petitioner in Crime No.20/2014 registered at Police Station- Basai, District- Datia (M.P.) for the offence under Sections 420, 467, 468, 34/120-B of IPC and during investigation it was found that account No.4856 is the saving account of the petitioner and his personal amount is deposited in the said account. It was further mentioned that in Crime No.20/2014, SBI account No.4856 was not frozen/seized and no document has been filed before the trial Court in respect of amount deposited in SBI account No.4856. It appears that an enmity is going on between the petitioner and Nayakheda Samiti Manager and because of that the Samiti Prabandkhak wants to dispute bank statement of Rameshwar account No.4856 whereas the said amount has nothing to do with the bank as well as the criminal case.

3. Accordingly, the petitioner made an application to the General Manager, Zila Sehkari, Maryadit Branch, Basai seeking some explanation about the steps taken by the Authority. Thereafter, petitioner also represented to the Collector, District- Datia (M.P.) and Zila Sehkari, Kendriya Bank Maryadit, Datia by its letter dated 03/07/2018 informed the Collector that petitioner has already been acquitted by the judgment dated 18/01/2018 passed in S.C. No.37/2015 against which criminal appeal No.15603/2018 is pending before the High Court (Gwalior

Bench). Respondent No.3 had filed W.P. No5430/2018 which was disposed of by order dated 16/03/2018 with an observation that petitioner (Bank) shall prefer a fresh representation elaborating all his grievances within a period of fifteen days and on receipt of representation so preferred by the petitioner, respondent No.3/competent Authority (General Manager) shall consider and decide the said representation and thereafter, pass a reasoned and speaking order under due intimation to the petitioner as expeditiously as possible. Accordingly, respondent No.3 has written a letter to SDO on 01/05/2018 with request that since an appeal against the acquittal is pending, therefore, amount can be released in favour of the petitioner on obtaining a bank guarantee. On 19/06/2018 gurantee which has been submitted by the petitioner is not a bank guarantee, therefore, amount has been withheld and as soon as bank guarantee is furnished by the petitioner, the amount deposited in Bank account shall be released. It is further submitted that Branch Manager, Jila Sehkari Kendriya Bank Maryadit Branch, Basai, Tahsil & District-Datia (M.P.) has also written a letter to the petitioner thereby informing that infact the amount has been freezed under the orders of Bhanu Khare. It is further submitted that once the petitioner has been acquitted in S.T. No.37/2015 decided by the Additional Sessions Judge, Datia on 18/01/2018 then the amount cannot be withheld merely on the ground that appeal against the acquittal is pending.

4. *Per contra*, petition is vehemently opposed by the counsel for the State. It is submitted by Shri S.K. Sharma that the appeal against acquittal is continuation of prosecution of the petitioner, and therefore, so long the appeal against acquittal is pending, the petitioner is not entitled

for release of amount and thus, the amount has been properly kept in a frozen condition.

5. Counsel for the respondent No.3 submitted that it has frozen the account of the petitioner on the instruction of the authorities and would act in accordance with directions given by this Court.

6. Heard the counsel for the parties.

7. It is the case of the petitioner that account No.4856 of the petitioner was frozen under the order of Upper Tahsildar which was later on withdrawn on the instructions of the Collector Datia. Thereafter, SHO Basai Tahsil and District- Datia had also directed the respondent No.3 not to release the amount thereafter by letter dated 3/2/2017, SHO Basai Tahsil and District Datia clarified to the Collector District Datia that the said account No.4856 is not a subject matter of Crime No.20/2014 registered at Police Station Basai, District Datia and the amount deposited in the said account is the personal amount of the petitioner. It was also informed that in Crime No.20/2014 the account No.4856 has not been seized and the said account has not been made part of the investigation and charge-sheet.

8. It is not the case of the State that apart from the criminal prosecution, any other proceedings were also initiated against the petitioner. Undisputed fact is that the petitioner has already been acquitted for offence under Sections 420, 467, 468, 471 and 120-B of the IPC by judgment dated 18/01/2018 passed by the Additional Sessions Judge, Gwalior in S.T. No.37/2015. Undisputed fact is that the appeal against acquittal of the petitioner is pending before the Court.

9. Now the only question for consideration is as to whether the

appeal against the acquittal can be said to be a continuation of prosecution of the acquitted accused or not ?

10. Once a person is acquitted, then there is a presumption of innocence in his favour. The filing or pendency of an appeal against the acquittal cannot be regarded as a continuation of trial/prosecution and also cannot be treated to be pendency of judicial proceedings as the initial presumption of innocence gets re-enforced by the order of acquittal.

11. Counsel for the State is incorrect in submitting that the appeal against the acquittal is a continuation of trial. Once a person has been acquitted irrespective of the fact that whether any appeal against his acquittal is pending or not, he becomes entitled for the benefits which otherwise would have accrued to him without there being any finding of guilt against the petitioner specifically when the account No.4856 is not a subject matter of the criminal trial.

12. It is really surprising that how the State Government is insisting that the said account should be kept in a frozen condition. The stand taken by the State is beyond imagination and reconciliation either on factual aspect or on legal aspect. Once SHO Police Station Basai, Tahsil and District- Datia (M.P.) had written to the Collector, Datia that account No.4856 is not a part of Crime No.20/2014 registered at Police Station Basai, Tahsil and District Datia and no document pertaining to account No.4856 has been made a part of the investigation as well as the charge-sheet, then the State had no authority whatsoever to keep the account of the petitioner in a frozen condition. Thus, it is clear that the State has illegally withheld the amount of the petitioner in a most arbitrary and

malafide manner.

13. Under these circumstances, this Court is left with no other option but to direct the respondent No. 3 to immediately release the amount so deposited in account No.4856. The petitioner shall also be entitled for the interest which must have accrued during the period of illegal retention of the said account. Since the petitioner has been deprived of his hard earned money without there being any proceedings against the said account, therefore, this petition is **allowed** with cost of **Rs.50,000/-** to be deposited by the State before the Principal Registrar of this Court within a period of one month from today. The Cost so deposited by the State can be withdrawn by the petitioner thereafter.

(G.S. AHLUWALIA)
JUDGE

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