

**IN THE COURT OF MS. NIRJA BHATIA, SPECIAL JUDGE, PC
ACT (CBI)-03, ROUSE AVENUE DISTRICT COURT, NEW DELHI**

(Through VC)

CBI Vs. Binod Kumar Giri & Ors.
R/CC No.321/2019

27.01.2022

Matter has been taken up through Video Conferencing hosted by Sh.Ashok Kumar, Reader of the court in terms of orders of Hon'ble High Court bearing No. 1/RG/DHC/2022 dated 12.01.2022.

Pr.(On screen): Sh. Praneet Sharma, Id. Sr. PP for CBI.
A-1 Binod Kumar Giri on bail alongwith Id. Counsel Sh.Vaibhav Suri.
A-2 Asif Dadrakar on bail alongwith Id. Counsel Sh.Ashish Dixit.

1. Ld. counsel has agitated upon his application moved under Section 451 r/w Section 457 Cr.P.C. for appropriate orders and directions capitulating *inter alia* that an FIR bearing RC No.1(A)/2016/AC-OOO/CBI/New Delhi dated 17.02.2016 had been registered against accused Binod Giri by CBI on the allegations that accused Binod Giri was employed as UDC in the Vigilance Cell of CBI and while being so posted taking advantage of his posting he used to call higher officials of various companies whose file was pending clearance from Vigilance Cell of CBI.

2. It is alleged that he accepted illegal gratification to the tune of Rs.10,000/- from A-2 who was the then Director and CMD of Sahara Dredging Ltd.
3. While putting forth the above-said facts and circumstances, he elaborated that during the process of investigation CBI seized the Postal Life Insurance Certificate of accused Binod Giri dated 01.08.2001 and also proceeded to freeze the bank account without following due procedure established under Section 102 Cr.P.C.
4. It is contended that the accounts frozen by the agency has no connection with the offence allegedly committed and further the IO has transcended his power under Section 102 Cr.P.C. while taking recourse to the act of seizure. It is claimed that as per the provision of Section 102 Cr.P.C. freezing of account/property is contingent upon where such account/property is allegedly or suspected to be stolen and/or which may have been found under circumstances which create suspicion of commission of any offence.
5. It is claimed that in the present case investigation had commenced and the freezing order had been made subsequently in which case it is difficult to comprehend as to how the applicant's bank account could be stated to have been found under circumstances which created suspicion of commission of an offence.
6. It is averred that the approach adopted by investigating agency in seizing the bank account smacks of illegality and arbitrariness and appears to be an exercise undertaken by throwing caution to the wind

without any live link or any remote nexus between the subject of investigation and the applicant's bank accounts.

7. While proceeding with the submissions it is argued that since the bank account is not a sequel to the discovery of offence the provision of Section 102 Cr.P.C. cannot be held attributed as nowhere it is alleged by the prosecution that the bank account itself led the investigating authorities to become aware about any commission of offence. Reliance has been made upon ***R. Chander Shekar vs. Inspector of Police : (2003) CrL LJ 294*** and ***Swarn Sabharwal vs. Commissioner of Police : (1988) CrL LJ 241.***
8. It is averred further that notwithstanding the fact that the aforesaid judgments by Hon'ble High Courts have clearly provided that the application of Sub-Section(3) of Section 102 Cr.P.C. is mandatory inasmuch as after freezing of the bank account it is the duty of the investigating officer to comply with the mandatory requirement of Sub-Section(3) of Section 102 Cr.P.C. and the IO is under a burden to forward a report to this Court which obligation is also stated to have not discharged in terms of the law laid down by Hon'ble Delhi High Court in ***Muktaben M. Mashru vs. State of NCT of Delhi : 2019 SCC Online Del 111509.***
9. It is claimed that Postal Life Insurance seized by the IO has no concern with the present case and in which background the following is prayed :
 - “(a) Direct defreezing of Bank account as detailed and described in para 3 of the application;

- (b) Direct release of Postal Life Insurance certificate dated 01.08.2001;
- (c) pass any other or such further orders as this Hon'ble Court may deem fit.”

10. Reply is filed by the prosecution wherein the contents pertaining to the investigation and seizure stated to be matter of record. Status of the accused as employee of CBI/UDC Vigilance Cell and his having allegedly received an amount of Rs.10,000/- from accused Asif Ibrahim Dadrakar, Director & Chairman of M/s Sahara Dredging Ltd., Mumbai is also stated to be matter of record.
11. While replying on merits, the averment pertaining to IO having transcended is authority and/or the provisions enshrined under Section 102 Cr.P.C. having been overlooked by investigation agency have been vehemently denied and opposed. It is denied that IO has not conducted any proceeding which can be termed illegal or contrary to the provision of Section 102 Cr.P.C. It is stressed that during the investigation it was revealed that an amount of Rs.7.27 Lakhs was deposited in the account as cash from the period of June 2014 to February 2016 which reflected that there is no illegal in seizure of account No.604810310002279 as claimed by the applicant/accused.
12. It is averred that the PLI Certificate dated 01.08.2001 had been scrutinized during investigation for the purpose of calculation of disproportionate assets against the accused and in respect of the averments made in paras-8 and 9 in application, it is submitted that

apart from the instant case after scrutiny of documents DA (Disproportionate Assets) case was also registered against the applicant. However, it is stated that in the said DA case a closure report was filed by CBI which was accepted by Hon'ble Court.

13.It is further stated that PLI Certificate and bank account No. 604810310002279 maintained with Bank of India by applicant/accused are unrelieved in the instant case.

14.I have heard the submissions from both the sides and perused the record carefully.

15.In view of the submissions, as there is no objection raised by CBI, no useful purpose would be served by engaging into discussions on the merits and/or by detaining the PLI certificate and/or keeping the bank account no. 604810310002279 frozen.

16. In view of the aforesaid, as the aforementioned are not relied upon in the instant case and closure report in the proposed DA case has already been filed and accepted by the Court, the bank account no.604810310002279 is hereby defreezed and the PLI certificate dated 01.08.2001 be released to the applicant after compliance of necessary formalities.

17.Application stands disposed of accordingly.

18. Let the main case be listed on **24.02.2022** for P.E.

(Nirja Bhatia)
Spl. Judge (PC Act) CBI-03
RADC/New Delhi/27.01.2022