

Order below Ex. 1

1. The present application is preferred by the Applicant U/s.497 & 503 of The B.N.S.S Act, 2023. It is contended by the applicant that incident of online fraud took place with the applicant. Hence, applicant had filed complaint before Cyber Crime Police Station. In pursuant to that, Investigating Officer of Cyber Crime Police Station has freezed the amount lying with the bank account of opponent u/s. 106 of The B.N.S.S Act, 2023 . The said amount is lying with the concerned Bank and applicant has not received the said amount yet. It is further contened that no F.I.R. registered against anyone. The applicant has to bear financial loss and he/she is in financial crisis. At the end, prayed to transfer the said amount in applicant's account under U/s.497 & 503 of The B.N.S.S Act, 2023.
2. The present application is ordered to be registered as Criminal Misc. Application and kept for hearing. Heard Learned Advocate on behalf of the applicant and Learned A.P.P. for the state. Perused the application and paper filed along-with the application. Perused the Police report.
3. It is profitable to refer Section 106 of The B.N.S.S Act, 2023 which reads as under :-

106. 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, or where there is difficulty in securing proper accomodation for the custody of such property, or where the continued 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(2) 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 Superitendent of Police and the provisions of section 503 and 504 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

4. Looking to the provision of Sub-Section (1) of Section 106, it is crystal clear that, 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. Further, looking to the provision of Sub-Section (3) of Section 106, it is also crystal clear that 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 accomodation for the custody of such property, or where the continued 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.

5. Thus, power of seizure is vested with the Police Officer and it is also mandatory forthwith to report the seizure to the Magistrate having jurisdiction. As per the say of the applicant, the Police Officer of Cyber Crime Police Station has freezed the account of the opponent. In the present case on hand, Police Officer of Cyber Crime Police Station has neither reported the said seizure/freezing of Bank Account to this Court at the time of seizure/freezing or after the completion of entire investigation nor registered any F.I.R. Further, as per the provision of Sub-Section (3) of Section 106, where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, the police officer may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required.

6. Now, looking to the wording of provision of Section-497 of The B.N.S.S Act, 2023, it is necessary that the property is produced before any Criminal Court, then the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial. Thus, this Court can not invoke the power under section 497 of The B.N.S.S Act, 2023 as the property is not produced before this Court by the concerned officer of Cyber Crime Police Station. Section-503 of The B.N.S.S Act, 2023 speaks that, whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of the act, and such property is not produced before a Criminal Court, during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof. In present case on hand, as discussed here in above, the Police Officer of Cyber Crime Police Station has neither reported to this Court in regard to the seizure/freezing of bank account nor registered any F.I.R. Thus, this Court can not invoke the power under section 503 of The B.N.S.S Act, 2023.

7. Therefore, as per the provision of Sec. 106 of the B.N.S.S Act, 2023, it is crystal clear that, the concerned Investigating Officer is required to report the concerned Magistrate having jurisdiction forthwith the seizure. In the present case on hand, the concerned Investigating Officer of Cyber Crime Police Station has not reported the fact of seizure/freezing bank account to this Court. The bank account of opponent has not been freezed by the order of this Court. No F.I.R has been registered in this case. Further, as per the provision of Sub-Section (3) of Section 106, where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, the police officer can give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required. Therefore, Looking to the prayer sought by the applicant, I pass following order in the larger interest of justice.

∴ ORDER :

- The Concerned Investigating Officer of Cyber Crime Police Station is directed to deal with the prayer sought by the applicant for the refund of amount freezed in applicant's account under the power vested in him/her under sub-section (3) of Section 106 of the B.N.S.S Act, 2023.
- A copy of this order be sent to the Cyber Crime Police Station accordingly for the compliance and necessary action.

Pronounce in the open Court on this 15th day of February, 2025.

(Manish V. Chauhan)
GJ01015
23rd Add. Chief Judicial Magistrate,
Court no. 11, Ahmedabad City.