Criminal Misc. Application No. 5953/2023

ORDER BELOW APPLICATION U/S. 451 AND 457 OF CR.P.C.

1. Heard, perused the papers and provisions of law.
2. Applicant has submitted /argued that applicant is residing at the address mentioned in the application and cybercrime/fraud has taken place with applicant as stated in the application. It is further submitted that from **applicant's Bank account No. 40900128588, Rs.10,000/-** was fraudulently/dishonestly withdrawn by the Accused person involved in cyber crime and hence, applicant made a complaint in the concerned police regarding that. Hence, the cyber crime Police/concerned police had taken steps to freezed amount of **Rs. 10,000/-** from **Account No.7235976097**, which is lying in the Accused’s **Indian Bank Account No. 7235976097**. It is further submitted that this amount is still freezed in concern Bank account of accused, which is required to be given to applicant & if it is not given to concern applicant, the applicant has to suffer huge financial loss. It is further submitted that applicant is required this amount for maintenance of applicant’s family & for other purpose and hence as per Cr. P. C. this amount needs to be given to the applicant. It is further submitted that, still accused has not been found so FIR is not lodged till date but only online cyber

fraud complaint is lodged. Hence, request to allow this application.

3. After this application, the Court has ordered to Investigating Officer to file his opinion/report as per the rules & hence, the Investigating Officer has submitted his written opinion/report in which he has stated that Government of Gujarat has launched/started Aashvast Project for the common citizens to stop cyber crime money immediately and to further prevent cyber crime when any amount of cyber crime victim is transferred online. Under this project, the cyber crime incident response Unit is working immediately to stop the money being transferred online by victims of cyber crime.

   When Victims of cyber crime directly lodge their complaints by dialing police Helpline No. 100 (presently 1930), a ticket number is given by Incident Response Unit. Also notice u/s. 91 and 102 of Cr. P. C. is issued to the Bank where the victim's money has gone into the suspicious bank account to freeze the money and also asking to inform them where the money has been transferred. The Police has further stated that the concern Bank has freeze the amount in Accused Bank Account in view of the Notice issued by the Police.

The Police has further submitted that incident of cyber crime has happened with the present Applicant/ Complainant in which **Rs.10,000/-**, were withdrawn illegally by fraud from the complainant Bank **i.e. State Bank Of India.** For which the applicant /complainant has made a complaint based on this complaint, **Rs.10,000/-** has been ordered to be freeze u/s. 102 of Cr. P. C., which were withdrawn from the complainant's Bank Account & deposited in the Accused Bank Account. The Police has submitted that the money mentioned in the application is given to the applicant/complainant, they have no any objection. Further the police has also supported the fact mentioned in the application.

4. From the report of the police & fact of the application, it transpires that the Accused Bank Account is/are bogus in nature and till date no any accused or owner of the Accused Bank Account is identified. It is further transpired that the fact narrated in the application is seemed to be true. But, till date, neither any FIR is registered nor any person is arrested and, since, the offence has been occurred and long time has been lapsed. Further, no any person has applied before this Court to claim this amount except applicant. It is further noted that as per the Police, no any person is entitled to claim this money except the

applicant. Hence, since no person has claimed this amount except complainant. It is just fair & reasonable to give this amount to the victim of the crime i.e. complainant.

5. For custody of the amount Sec. 457 of Cr. P. C. is relevant, which is under Section- 457:

Section 457 in The Code Of Criminal Procedure, 1973
457. Procedure by police upon seizure of property.
(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, 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, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) *If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.*

6. Hence, from the above facts and circumstances & discussion and from the above provisions & from the Judgment given by the Hon'ble Supreme Court of India in Sunderlal Ambalal Desai V/s. State of Gujarat 2003 GLJ, 307, this application is required to be allowed and following order is passed in the interest of justice:

Order

1. Muddamal Application u/s. 457 of Cr.P.C. of the complainant is hereby allowed.

2. The Amount of **Rs. 10,000/-** (which is freezed) in the Accused's Bank account is ordered to be given temporary to the applicant/complainant on production of bond of one and half times of the aforesaid amount and also on production of personal bond of like amount in the concerned police station on following conditions:

    1. The applicant will have to deposit/produce aforesaid amount in the Court as & when Court orders.
    2. In Case the Bank or any other entitled person claims this amount & proves entitlement, the applicant has to return this amount immediately as ordered by the Court.
    3. The applicant shall not use this amount to any criminal or / and illegal activity.
    4. In breach of the above condition/s, this order shall be automatically cancelled & the amount shall be liable to be forfeited and amount of bond and personal bond will also be recoverable.

3. It is further ordered that when the applicant furnish the surety/ bond as per order of this Court at the concern police

station, the Police should report / inform to the concern Bank (i.e. Accused Bank)

4. Further, when the concern Bank is informed by the Police regarding this Order & production of surety/bond at the Police Station, the Bank shall transfer/deposit the amount of **Rs. 10,000/-** (which is freeze) from its **Account no. 7235976097** to the applicant's Bank i.e. **State Bank Of India's Account No. 40900128588**, within 7 days from the receipt of the information and shall report to it to the concern Police Station and Court without fail.

Pronounced in the open court today i.e. on 10/07/2023.

Date: 10 /07/2023
Place: Ahmedabad.

[S. J. Panchal]
Addl. Chief Metropolitan Magistrate,
Ahmedabad.
Code No. GJ00864.