MHKO010037022023

<u>Order below Exh.44 in Special Case No.224/2023</u>

This is an application filed by the applicants Mrs.Archana @ Sakhubai Ajinath Deokar and Mr.Ajinath Mohan Deokar under Section 457 of Cr.P.C., for De-Freezing of Bank Account.

<u>The case of the prosecution in nutshell is as under</u> :-

02) The informant, Kishor Patil lodged FIR against applicants and others being C.R. No.112/2023, registered at Murgud Police Station under Sections 406, 409, 420 of I.P.C. and under section 3 of the MPID Act. As per the complaint of the informant, in the month of July 2021, he met accused, Dattatraya Patil, who gave an information that he is having his own trading company named *'Dhanshanti Multi Trading Services LLP'* and his wife, Deepali Dattatraya Patil is a partner. He also gave information that if the informant invests Rs.1 lac in the Company, he will get Rs.11,430/- p.m. for 20 months as a return and after completion of 20 months, he will get back the original investment amount of Rs.1 Lac. So that the informant invested an amount of Rs.19,89,000/- during the period of August 2021 to January 2022 and Rs.61,31,300/- by way of cash from June 2021 to June 2022. As such the informant invested an amount of Rs.81,20,000/- in 'Dhanshanti Multi Trading Services'. Dattatraya Patil and Deepali Patil gave return @ 11% for few months. The informant from the month of February 2022, stopped receiving return from the Company, so that he contacted the Dattatraya Patil and Deepali Patil. At that time, they told the informant that they have invested the amount at Pune based trading Company and due to delay in receiving the amount of return from that company, they failed to give monthly return to the informant. After few months as the informant never received repayment of his invested amount, he repeatedly demanded his amount to Dattatraya Patil and Deepali Patil, at that time they told that they have invested the amount with their trading partner, Nitin Jagannath Gote (accused No.3) at Pune.

03) The informant repeatedly demanded his invested amount, at that time Nitin Gote (accused No.3) told them that from the amount invested by Dattatraya Dadu Patil, he will give them flats from the building, 'Gurukrupa' owned by Ajinath Deokar, hence, the informant trusted on him. Accordingly, the informant and others met the applicants i.e. Ajinath Deokar and Archana Deokar. They told the price of each flat is of Rs.23,00,000/-. The informant and others agreed to purchase the said flat. On 06/04/2022, they went to Sub Registrar Office, Haveli No.6, Pune and prepared Vat-mukhatyar Patra and Kulmukhtyar Patra. At that time, out of 12 flats owned by

Ajinath Deokar, the informant got recorded one flat in his name and other one in the name of Jaydeep Dipak Podar, R/o.Digraj. Accused No.3, Nitin Jagannath Gote paid expenses amount for the documents. So that the informant thought that Ajinath Deokar and Archana Deokar are ready to give the flats recorded in the name of informant.

04) After 4 months on completion of construction of flat, the informant visited to Ajinath Deokar and Archana Deokar for sale-deed and possession of flats. At that time, Ajinath Deokar and Archana Deokar denied to execute sale deed and to give possession of the flat and stated that Nitin Gote had not given any amount to them against the flat agreed to be purchased by them. Thereafter, all accused intentionally failed to give time of visit to them jointly by showing different reasons. So that the informant lodged FIR against the accused,

05) The Ld.advocate Mr. Tawde for the applicants argued that the Investigating Officer sent letter to the Manager of HDFC Bank, Kolhapur directing to freeze the following six accounts -

Sr. No.	Type of Account	Account No.	Account Holder
1.	Current Credit	50200035299996	M/s.D & D Group
2.	Current Account	50200026375943	M/s.D & D Group
3.	O.D, Account	50200029050769	M/s.D & D Group
4.	Personal Saving Account of applicant No.1	50100213855130	Ajinath M Deokar
5.	Current account	50200038184232	Deokar

			Infrastructure Pvt. Ltd.
6.	Personal Saving account of applicant No.1	50100338178831	Mrs.Archana @ Sakhubai Ajinath Deokar

06) The charge-sheet has been filed against accused No.1, 2 and 5 on 06/10/2023. The accused No.4 is on anticipatory bail since 13/09/2023 and charge-sheet against him yet to be filed. After granting anticipatory bail order dated 13/09/2023, from the Hon'ble High Court, applicant No.2 remained present for the investigation before the concerned Police Station on 16/09/2023, 30/09/2023, 14/10/2023, 28/10/2023, 11/11/2023, 25/11/2023 and 09/12/2023 and co-operated for investigation. The bank account of the applicants, which were wrongly frozen by the investigation agency during the course of investigation, so that the applicants have filed present application for De-freezing of accounts on the following grounds -

(1) The applicants are doing business and permanent resident of Hadapsar, Pune. There are no allegation against the accounts of present applicants in F.I.R. The Investigating Officer failed to comply the requirements of Section 120 of Cr.P.C., by not informing the Magistrate of the action of freezing the said bank accounts of the applicants. Due to freezing of bank account, the applicants are not being able to run their business and are being subjected to heavy losses in their business. The applicants are unable to give the payments to the purchasers, sub-contractors and workers/employees of the Company.

(2) The investigation of alleged offence is based on documents which have already been seized and are in the custody of the Investigating agency. The applicants have not suppressed material facts. They have maintained propr accounts, which are duly audited. There is no record of illegal or suspicious activity in respect of debts and credit in the accounts. In the entire investigation, nothing is mentioned that the amount from the alleged transaction has been deposited in the said bank account of the applicants. It is further pertinent to note that keeping the accounts frozen in a non operative mode would not help the investigation agency and is only causing losses to the present applicants.

(3) The applicants are using first two accounts for purchase of material for their company/firm, for giving payments to the sub-contractors and for the payment of workers/labours in the company. Third account is a loan account of company/firm from which firm is using overdraft facility. Forth account is applicant No.2's personal account. Fifth account is in the name of Deokar infrastructure Pvt.Ltd., Sixth account is personal saving account of applicant No.1. The applicants have no other business or any other source of income, the freezing of the bank accounts has totally stop all their activity to earn and income for their family's livelihood. The fundamental rights of the applicants of the right to livelihood and to engage in his business are being violated.

(4) The applicants are third party in the FIR. The complainant and the investors of Dhanshanti Multi Trading Services Co., never directly or indirectly invested any amount with the applicants. From the allegations of informant in FIR, prima facie, it appears that the complainant and investors of Dhanshanti Multi Trading Services Co., invested their amounts with accused No.1 & 2, and accused No.1 and 2 invested with accused No.3. Nowhere, it appears that the investors have invested their amount with accused No.4 and 5 i.e. the present applicants and it also does not appear that the accused No.1 and 2 invested their amounts with accused No.4 and 5 i.e. present applicants. The accused no.3 admitted the investment from accused No.1 and 2 with him. Nowhere it appears that he had invested any amount with the accused No.4 and 5. These applicants are third party and having no concerned with the amounts of investors. So the act of freezing the accounts of applicants is wrong.

(5) The freezing of the bank accounts of these applicants is affecting the interest of the vendors, sub-contractors, workers/employees of the company of the applicants and the applicants also. These accounts of applicants had no direct or indirect nexus with the offence mentioned in the C.R. The freezing of the bank accounts of this applicants are impacting on the rights of the vendors, sub-contractors, workers/employees of the company of the applicants. The accounts, mentioned at Sr.No.1 and 3 are loan accounts of the Company. The Company is using these accounts to repay the loan amounts of the company. The action of investigation authority on these accounts is a violation of the applicants' fundamental rights under Article 21 of the Constitution.

07) The applicants prayed to direct the respondent to de-freeze the bank accounts of the applicants, mentioned in the application with the HDFC Bank, Branch Wanawadi, Pune and the applicants be allowed to operate the said bank accounts.

08) The applicants have produced documents, which includes copy of FIR, Aadhar Card of applicants, copy of notice issued to HDFC Bank as per Section 102, 91 and 160 of Cr.P.C., cancelled cheques of applicants' account and their company, license under Shop Act, order of Hon'ble High court in Bail Appln. No.2940 of 2023 of applicant, Mrs.Archana Deokar and Anticipatory Bail Appln.No.2601 of 2023 of applicant, Ajinath Mohan Deokar, Bank Statement of applicants, during the period of 01/04/2021 to 31/03/2022 and from 01/04/2023 to 29/09/2023, copy of letter dt.23/12/23, issued to EOW, Branch, Kolhapur by applicants and acknowledgment receipt.

09) So also the applicants have filed on record the documents vide Exh.69, which includes Combined Challan of Employee’s Provident Fund Organization, Electronic Challan cum Return of Employee’s Provident Fund, Payment Confirmation Receipt and Contribution History .

10) The Ld.advocate for the applicants, Mr.Somnath Tawade filed written argument vide Exh.67. It is contended that the applicant's bank accounts have been freezed as per the letter dated 31/07/2023 of the Economic Offences Wing, Kolhapur. On 31/07/2023, the applicants have following amounts in their accounts.

Sr. No	Type of Account	Account No.	Account Holder	Amount
1.	Current Credit	50200035299996	M/s.D & D Group	Rs.89,26,442.03
2.	Current Account	50200026375943	M/s.D & D Group	Rs.6,03,382.58
3.	O.D, Account	50200029050769	M/s.D & D Group	Rs.6,040.04
4.	Personal Saving A/c. of applicant No.1	50100213855130	Ajinath M Deokar	Rs.28,135.54
5.	Current account	50200038184232	Deokar Infrastructure Pvt. Ltd.	Rs.12,144.54
6.	Personal Saving A/c. of applicant No.1	50100338178831	Mrs.Archana Sakhubai Ajinath Deokar	@Rs.81,924.02

11) On 31/07/2023, when the EOW, Branch, Kolhapur issued a notice to HDFC Bank regarding freezing of the bank account, the total amount in all the accounts of the applicant was Rs.7,31,636/-. It is also clearly appears that the said amount has not come from the informant, investor, accused No. 1, 2 & 3.

12) The informant, investor, accused no. 1 to 3 have no connection with the said amounts. In such a situation, there is injustice with the applicant by freezing the bank accounts without any reason. It is clear from the bank statement that the said amounts came from the applicant's business. In this case, the F.IR. is of dated 24/05/2023 and the order regarding freezing the bank accounts is dated 24/05/2023. Even though the police officer had ample time to study the said bank accounts, the police officer has illegally frozen the bank accounts.

13) As per Section 102 of the Code of Criminal Procedure, if there is a suspicion that the amount/property is stolen or there is a connection between the crime committed and the relevant amount/property, the investigating officer has the power to seize the said amount/property. From the bank statement of the applicant, it is seen that the said amount did not come from accused no. 1 to 3. There is no money trailing from accused no. 1 to 3 on the applicant's account. Since the applicant's accounts are commercial accounts, it has become difficult for the applicant to do business. Since the applicant is unable to pay the amount to his workers and suppliers, they are facing financial difficulties and due to this the applicant's business is in trouble.

14) Dhanshanti Multitrading Services is the organization of accused No. 1 and 2 and the informant had invested the amount with accused No. 1 and 2. The applicants/accused No. 4 and 5 have no connection with the said transaction. The applicants are not a promoter, partner, director, manager, employee of Dhanshanti Multitrading Services Company. Nor they are related to the business and management of the said organization. It is seen from the FIR of the informant that the investment was made with accused No. 1 and 2. Therefore, Sections 406, 409 and 420 of the IPC do not apply. The applicants are ready to give bond or bank guarantee of Rs. 7,31,637/- in the court. Therefore, unfreeze the bank accounts of the said applicants.

15) In the above facts and circumstances, this Court found that F.I.R. is lodged by Kishor Patil being C.R.112/2023, at Murgud Police Station and in the said FIR, the names of applicants/accused No.4 – Ajinath Mohan Devkar and No.5 – Sau. Archana @ Sakhubai Ajinath Devkar are specifically mentioned along with their specific role. The applicants/accused No.4 and 5 refused to give possession of the flat to the informant. They also denied that they received any amount from Nitin Gote, accused No.3. The applicants further denied that

Nitin Gote, accused No.2 not paid any amount so that the applicants/accused No.4 and 5 can not give any possession of the said flats to the informant. After going through the FIR, it is found that accused No.1 to 5 are connected with each other and with common intention and by criminal conspiracy committed said offence. The applicants/accused No.4 and 5 also taking advantage of death of accused No.3, Nitin Gote, who died on 14/04/2023 as per case of the prosecution. The Investigating Officer submitted the two photographs from which it is found that the accused No.4, Ajinath Devkar, deceased accused No.3, Nitin Gote were present in meeting. In order of Bail Appln. No.2940/2023, dated 04/11/2023, of accused No.5, Mrs. Archana @ Sakhubai Ajinath Deokar, the Hon'ble High Court has observed that, "Needless to mention that the present application is being decided considering that the applicant is a woman and as the investigation is complete, the charge-sheet has been filed as against the present applicant."

16) It is found that the bail application of accused No.4 is still pending and not finally decided by the Hon'ble High Curt. In the said order, the Ld.APP submitted before the Hon'ble High Court that "the husband of the present applicant i.e. accused No.4 has filed an affidavit-cum-undertaking in this Court that in respect of the 12 flats which are given on leave and licence basis, the accused No.4 will not further extend or execute fresh leave and licence agreement in respect of the above flats with any other persons. It is further undertaken that the accused No.4 will not create any type of third party interest in respect of the said 12 flats in favour of any persons mentioned in the affidavit-cum-undertaking. The accused No.4 has further undertaken to deposit an amount of Rs. 5 lakhs with the Trial Court within 2 weeks from today."

17) After going through the statement of HDFC Bank account No.50200035299996 of D & D Electrical, it is found that on 28/12/2021, Nitin Jagganath Gote, accused No.3 transferred an amount of Rs.6,00,000/- and an amount of Rs.14,00,000/- through RTGS. So also from the statement of HDFC Bank account No.50200026375943, it is found that Nitin Jagganath Gote, accused No.3 transferred an amount of Rs.25,00,000/- on 25/02/2022 and an amount of Rs.25,00,000/- on 26/02/2022. From the aforesaid statements of HDFC Bank, it is found that the accused No.4 and 5 received said amounts.

18) It is also found that accused No.4, Ajinath Devkar & No.5, Archana Devkar have filed an application before EOW on 23/12/2023 for de-freezing their accounts. On said application, the Ld.APP argued that investigation is not completed and there are prima facie sufficient material against accused.

19) Upon perusal of Kulmukhtyarpatra, dated 6th April 2022, it is found that applicants/accused No.4 and 5 have given in writing to the informant, Krishor Patil about the Flats in Gurukripa Apartment, Haveli vide Regd.No.5767/3/25 in the year 2022. The said Kulmukhtyarpatra is signed by both the parties i.e. informant and present applicant/accused No.4. The said document shows the specific transaction between the informant and applicants/accused No.4 and 5. As per the said Kulmukhtyarpatra, it is binding upon the both concerned parties.

20) It also found that applicant/accused No.4, Ajinath Deokar filed undertaking-cum-affidavit before the Hon'ble High Court that, after completing the period of Leave and License agreement of above said 12 Flats with 12 persons, he will not further extend or will execute fresh Leave and License agreement in respect of Flats with any other persons for the period. Accused No.4, Ajinath further undertake that he will not execute any sale deed or will not create any type of third party interest in respect of 12 flats in favour of any persons for the period, which the Court deem fit. So also accused No.5, Ajinath undertake that he will deposit an amount of Rs.5,00,000/- under protest in the Court within the period of two weeks from the date of said order.

21) In the above said facts and circumstances, this Court prima facie found sufficient material against the applicants/ accused No.4 and 5. So that this Court not agreed to allow the present application for De-freezing the bank account of applicants/accused No.4 and 5. This Court not agreed with the arguments advanced by the Ld.advocate for the applicants/ accused No.4 and 5. This Court agreed with the argument advanced by Ld.APP, Mr.Peerjade. Hence, this Court proceed to pass following order.

ORDER

1. The application at Exh.44 for De-freezing the bank accounts of accused No.4 and 5 is hereby rejected.

2. Application is disposed of accordingly.

Digitally signed by SHAILENDRA SHANKAR TAMBE
Date: 2025.03.13 17:44:42 +0530

Date : 12/03/2025.

(Shailendra Tambe)
Addl. District Judge, Kolhapur.