


MHNG030303472022 	R.C.C.No. 4392/2022 State Vs. Roshan & Others
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**ORDER BELOW EXH. 19**  
**(Passed on 04.03.2025)**

Accused No. 1 (hereinafter referred to as 'the applicant') has filed application for Defreezing cash credit account bearing No. 36723467820 lying in the State Bank of India, Katol, Dist. Nagpur. Read application and say of Informant, I.O. and Ld. APP.

2. The Ld. Advocate for the applicant vehemently submitted that crime No.293/2021 has been registered in Sadar Police Station, Nagpur against him and his family members for the offences punishable under Sections 420, 467, 468 and 471 r.w. Section 34 of the I.P.C. at the instance of Mr. Ramesh Gupta, Water Conservator Officer in Zilla Parishad, Nagpur. The applicant is the partner in the firm namely M/s. Nanak Construction with accused No. 2. It is alleged by the prosecution that Nanak Construction was allotted repair work of water tank from Zilla Parishad of four different areas. The applicant has withdrawn the additional security deposit of Rs. 73,98,500/- from the bank without the permission of Zilla Parishad. The I.O. by giving letter to the Bank under Section 91 of the Code of Criminal Procedure (Cr.P.C.) directed the Bank to freeze the cash credit account of the applicant which is illegal. In fact, all allotted works were completed before registration of offences. As per section 102(3) of the Cr.P.C. it is mandatory on the part of I.O. to issue notice to the applicant and to inform the Judicial Magistrate. However, he has not done so. The applicant and accused Nos. 2 and 4 deposited some amount in the Hon'ble High Court as per the order in bail

applications. Later on, the Hon'ble High Court is pleased to allow the applicant and accused No. 2 and 4 to withdraw the said amount. The Cash Credit Account of the applicant is the only business account in which all the business transactions are carried out. However, due to the freezing of the said account, the applicant is unable to carry out any kind of financial transaction thereby he is suffering heavy monetary loss and his business would be closed. Therefore, the said account may be defreezed. He relied upon the ruling laid down in the case of **Aeronfly International Private Limited Vs. State of Himachal Pradesh and Others** decided by the Hon'ble High Court of Himachal Pradesh, Shimla on **04.09.2024** in Cr. MMO No. 533 of 2024.

3. The Ld. APP submitted that the amount in the cash credit account belongs to the Zilla Parishad. The accused had broken the fixed deposit receipts (FDR) given for work performance security without permission of Zilla Parishad. The accused have removed the original FDRs and replaced the same by colour photo copies of the original FDRs and withdrawn the amount without permission of the Higher Authority. The said security deposit would be given back to the applicant after the prescribed period of completion of the work. The applicant and other accused deposited some amount in the Hon'ble High Court. There is possibility that Zilla Parishad would claim the amount. The accused cheated the Zilla Parishad. The trial is not yet commenced. If the account is defreezed, there is strong possibility of withdrawing the amount by the applicant. She lastly prayed for rejection of application.

4. Perused record. The applicant is released on bail vide order dated 06.09.2022. Charge-sheet is filed. It appears that the I.O. has issued letters dated 28.07.2021 and 01.09.2021 under Section 91 of the Cr.P.C. to the Bank for providing information of the FDRs and statement of cash credit account. The I.O. again issued letter dated

28.02.2022 to the Bank to freeze cash credit account. Thus, the I.O. appears to have issued the letter dated 28.02.2022 under section 91 of the Cr.PC. to freeze the Cash Credit account of M/s. Nanak Construction in which applicant is partner. The I.O. directed the Bank to freeze the said account on the reason that 10 FDRs have been withdrawn from the said account. The statement of the said account shows that 8 FDRs have been credited in the said account on 12.08.2020 and 2 FDRs have been credited in the said account on 09.12.2019. However, it is material to note that the said account is Cash Credit Account which generally means Short Term Loan that allows businesses and companies to withdraw funds up to a set limit. Thus, it is not a saving account or current account of the applicant. It appears that by way of credit of FDR amount, some loan amount of the bank was repaid. The applicant has submitted copy of statement of the said account from 01.01.2024 to 05.11.2024 which shows the balance amount to the tune of Rs. 1,16,762.52 only which appears to be loan amount. Therefore, purpose of freezing the said account has not been served.

5. Further, it is well settled that the power to direct freezement of account is not available under Section 91 of the Cr.PC. but it is available under Section 102 of the Cr.PC. to the investigating agency. The relevant provisions of section 102 of the Cr.PC. run as under :-

- 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 accommodation 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.

6. Thus, in view of section 102(2) of Cr.P.C., if the officer seizing the account is subordinate to the officer in-charge of a police station he shall forthwith report the seizure to that Officer. However, in the present case no material is placed on record to show that freezing of the account was reported to the superior officer.

7. Moreover, as per requirement of sub-section (3) of section 102 of Cr.P.C., the police officer freezing the account shall forthwith report it to the Magistrate having jurisdiction. However, no material is placed on record to show that the freezing of the account was immediately reported to the Magistrate having jurisdiction. Moreover, before freezing of account, no notice was issued to the present applicant. It shows that the I.O. has failed to comply mandatory provisions of section 102 of Cr.PC before freezing the aforesaid account of the applicant.

8. The cases of Sahil Raj Vs. State of Tamilnadu and Others, Writ Petition No. 21344/2024 decided on 14.09.2022, K. Sathvik Reddy Vs. Union of India and others 2023 SCC Online TS 4377 decided on 21.12.2023, Ayesha Creations Private Limited and another Vs. State Bank of India and others 2023 SCC Online Cal 2268 decided on

04.08.2023, Sree Gowri Ganesha Souharda Credit Co-operative Society Ltd. Vs. The Superintendent of Police, Bangalore Rural, District Bangalore and Others decided on 22.06.2023, Manish Khandelwal Vs. State of Maharashtra, 2019 SCC Online Bom 1412, decided on 30.07.2019, Datum Micro Credit Gundichar Nagar, Ganjam Vs. State Bank of India and Others, Writ Petition (C) No. 5451 of 2022, decided on 23.12.2022, R. Chandrasekar Vs. Inspector of Police, Fair Land Police Station, Salem and Another, 2002 (5) CTC 598, decided on 11.10.2002 and Ms. Swaran Sabharwal Vs. Commissioner of Police, 1990 68 CompCas 652 Delhi were referred in the case of **Aeronfly International Private Limited Vs. State of Himachal Pradesh and Others** cited Supra.

9. The sum and substance of these rulings is that Section 91 of the Cr.PC. does not empower the investigating agency to order debit freeze of bank account. Non compliance of the procedure laid down under Section 102 of the Cr.PC. is not only an irregularity but it is a mandatory provision and if not followed, it will entail the consequence of giving directions to defreeze the bank account. The duty of reporting to the Magistrate any seizure of bank account is cast upon the I.O. as freezing of the bank account prevents the person from operating the bank account pursuant to investigation. The reporting of the freezing of bank account is mandatory. Failure to do so, will vitiate the freezing of bank account. The Police Officer shall forthwith report to the Magistrate and also give notice to the account holder and allow him to operate the bank account subject to executing a bond undertaking to produce the amount in Court as and when required.

10. In the present case, the I.O. has not complied with the mandatory provisions of Section 102 of the Cr.PC. Therefore, the freezing of cash credit account of the applicant cannot be sustained.

11. Moreover, copy of order dated 08.04.2023 of the Hon'ble High Court Bombay, Nagpur Bench in Cr. A. No. 493/2024 in Cr. A. No. 503/2021 shows that the applicant is allowed to withdraw an amount of Rs. 10 Lakhs deposited by the applicant at the time of grant of anticipatory bail application.

12. In these circumstances, the application deserves to be allowed. The applicant is ready to furnish the bond to the satisfaction of this Court. Hence, the following order :-

**ORDER**

- 1) Application is allowed.
- 2) The Investigating Officer attached to Police Station, Sadar is directed to defreeze cash credit bank account of M/s. Nanak Construction bearing Account No.36723467820 on executing bond by the applicant of Rs. 90,00,000/- undertaking to deposit the said amount in Court as and when required by the Court.
- 3) The applicant shall not misuse the amount in the aforesaid account.

Date : 04.03.2025

(U. P. Kulkarni)  
Chief Judicial Magistrate,  
Nagpur.

Certificate

I affirm that the contents of this PDF Judgment are same word to word, as per original Judgment.

Name of Stenographer:- Pravin T. Mandale, Stenographer (Gr. II)