IN THE COURT OF JUDGE SMALL CAUSES SRINAGAR

Reg. No. :3856/2023
CNR No: JKSG030061972023
D.O.I : 29-12-2023
Date of Order :04.03.2024

In the case of:

1. Abid Rashid Lone
   S/O Abdul Rashid Lone
   R/O Hamza Colony, Wanabal, Srinagar,
   Jammu & Kashmir, 190005

.....(Applicant)

Versus

1. Union Territory of Jammu & Kashmir Through: SHO Police Station Cyber, Kashmir Zone, Aloochi Bagh, Srinagar. Jammu and Kashmir-190009
2. HDFC BANK, Baghat, Barzula Branch Through Its Branch Manager Jammu and Kashmir-190015

.....(Non-Applicants)

In the matter of: An application seeking de-freezing of account.

Coram: TABASUM (JO CODE: JK00173)

O R D E R

The instant application has been presented before this court for disposal under law. In the application it has been stated that the applicant, Mr. Abid Rashid Lone, is a respected professional in the field of technology, has served as the director of NYUR Tech, a state of the art company dealing with technological advancements and initiatives, including one crypto currency related project which is the matter of dispute in the instant application. He has gained national fame and accolades after starting his

company, Fast Beetle, which went on to make a place in the national investor show Shark Tank India, in which company (Fast Beetle) he is currently working and heading a major part of the operations and employs over 300 people currently. He maintains a clear record with no history of criminal activity or involvement in illicit financial transactions. This establishes his credibility and good standing within the community, and he is a son of the soil who has made the UT of J&K proud. The applicant's bank account with HDFC Bank (Account No: 50100218896740) has been unjustly frozen by the respondent, without any proper inquiry or consideration of the circumstances. As per routine investigation in some criminal case, the applicant has been made a part of the same as a scapegoat, for no fault of his own. This action has led to substantial financial and personal distress for Mr. Lone, impeding his ability to conduct both personal and professional financial transactions, and is affecting his day to day life. The accounts have been arbitrarily frozen, and before, or even after, no notice or communication has been provided by the bank (non-applicant no. 2 herein) and they have refused to clarify or explain any of the details or circumstances fully. The applicant has had to run from pillar to post in order to even get information about why or how his account was frozen, and the police have also failed to provide information and details. The alleged reason for the freezing of Mr. Lone's accounts is his supposed involvement in suspicious financial transactions in crypto currency, Mr. Lone categorically denies any such involvement. A detailed report of the cybercrime incident, citing the specifics of the allegation (Acknowledgement Number: 21403230001336), along with Complaint Detail sheet with Acknowledgement Number: 32501230001144, along with copies of all the relevant emails including grievance acknowledgment and correspondence with bank and police are collectively enclosed herewith as ANNEXURE I. These documents highlight the nature of the complaint and the subsequent actions taken against Mr. Lone's accounts as well as other important facets and details of the case. To substantiate the legitimacy of his

business activities, Mr. Lone has provided a Binance receipt (Order Number: 20451475443674275840), indicating a lawful cryptocurrency transaction and has also provided a status of the bank account freeze shown on his mobile app. further supporting Mr. Lone's assertion of legitimate business practices are a series of tax and business/payment invoices. These invoices detail business transactions between NYUR Tech and Centurion Invest and collectively affirm the nature of Mr. Lone's professional engagements. The applicant, while working with NYUR Tech was working as per certain terms and conditions outlined in his service agreement by Centurion Tech signed with the above mentioned company, wherein, in Clause "9 Invoices and Payment" it is clearly mentioned that the transactions for payments would be made in USD, and 90% of the fees would be paid in Crypto currency/USDT at the specified Wallet Address. The applicant had been receiving payments in the form of crypto currency and the transactions under question due to which the account has been frozen, stem from him simply trying to dispose off/ sell this excess crypto as he has no need of it anymore before it gets devalued. Respondent's action in freezing Mr. Lone's bank accounts violates the principles of natural justice. Mr. Lone has not been given a fait opportunity to present his case or contest the allegations against him. This lack of due process undermines the fundamental legal principle that no individual should be condemned unheard.The undue freezing of Mr. Lone's accounts has not only caused financial harm but has also resulted in significant reputational damage. This has severely impeded his ability to conduct business and fulfill personal obligations, further exacerbating the distress caused by the account freeze. Hence, prayed that this Court that it may be pleased to ORDER THE DE-FREEZING OF MR. LONE'S BANK ACCOUNT,
thereby restoring his ability to manage his financial affairs and upholding the principles of justice and fairness, or pass any other order, relief or direction in favour of the applicant, and against the non-applicants that this Court deems fit in the attending circumstances of the case.

Heard and considered.

The investigating officer has sought time to submit status report. Today he submitted that he has made communication with the relevant corridors regarding the matter and it is confirmed that the applicant has received an amount of above Rs.50 lacs in his account within a period of nine months, source of the money is krackin in the form of crypto currency which is banned as the krackin is involved in money laundering. It is further submitted by the IO that the account has been seized by the Punjab Police earlier in an FIR.

The counsel for the applicant submitted that the executive police has no jurisdiction to entertain the matter. If it is the case of money laundering then Directorate of Enforcement Home has the jurisdiction to deal with the case. Further submitted that the applicant is not the accused, he is the third party in the matter and his account cannot be seized by the police. He further submitted that the police authorities have write to the Ministry of Home Affairs then only the Directorate of Enforcement Home can do the investigation, however the police authorities have not sent any communication to the ministry of the home affairs and the executive police is not empowered and authorized to do the investigation if it is a case of money laundering. The counsel for the accused has relied on following judgment;

Serial No	Judgment Name And Citation	Precis Of Ratio Decidendi/Obiter Dicta
1	Opto Circuit India Ltd. vs. Axis Bank and Ors, AIR2021SC753	The PMLA is a standalone enactment with its own provisions for seizure, including account freezing. The Court held that powers under a special act like the PMLA take precedence over general laws like the Cr.PC.

2	Directorate of Enforcement vs. Abdullah Ali Balsharaf and Ors, 2019 SCC OnLine Del 6428	Essentials of Section 17 of the PMI.A must be strictly followed, and Section 102 of the CrPC cannot be used for seizure or freezing under the PMLA.
3	Anuradha Sadashivamurthy vs. State of Karnataka and Ors.. MANU/KA/5007/2018	There must be a 'strong' suspicion to freeze third-party bank accounts, emphasizing careful scrutiny.
4	Rajamani vs. The Inspector of Police, Shevapet Police Station and Ors., 2003 SCC OnLine Mad 915	Discretion in freezing accounts must be exercised with utmost restraint, highlighting the importance of proportionality and necessity.
5	R. Chandrasekar vs. Inspector of Police, Fair Land Police Station Salem and Ors., 2002 SCC OnLine Mad 686	No nexus to the crime justifies non-interference with third-party accounts, stressing the relevance of direct involvement for such drastic actions
6	Hajji Mohammed Sattar vs. State of Telangana ACB, MANU/TL/0510/2019	If account statements are secured and no incriminating evidence is found, freezing is unwarranted. This aligns with the principle of evidence-based action.
7	B. Kavitha vs. The Inspector of Police, MANU/IN/4197/2019	Freezing accounts without FIR and non- compliance with Section 102 violates fundamental rights, emphasizing legal adherence and the protection of rights
8	Sunderbhai Ambalal Desai	"However, these powers are to be

	v. State Of Gujarat. 2002 SCALE 9 153,2002 JT10, 80.2002 SCC 10 283.2003 AIR SC 638. 2003 SCC CRI 1943.2002 SUPREME 8 525. Supreme Court Of India (Oct 1, 2002) CASE NO. SLP (Crl.) No. 2745 of 2002, SLP (Crl.) No. 2755 of 2002;	exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly."

The judgment which has been provided by the ld counsel for the applicant from serial no.1 to 2 are applicable with respect to the money laundering cases and since it is yet to be decided by the inquiry officer whether the act of the person/applicant falls under the money laundering act or some so the judgment at serial no. 1 to 2 are not applicable in the instant matter.

With respect to the judgment no.3 it is on the basis of the suspension the inquiry officer has conducted the inquiry. With respect to the judgement at serial no. 4 to 5 and 6 since in the instant matter some transactions have been made which made the police officials to believe that the account verification is to be done and freezed the account even if the applicant has not been made as accused in the matter.

With respect to the judgment no.7 the account of the applicant is also under freeze in an FIR lodged by the Punjab Police station.

With respect to the judgment 9 it is not a kind of article which has been in the police station and needs to be released it is only account which has been freezed and even if defreezing order is passed by this court the account is still under freeze in another FIR of the state of Punjab. According the judgments provided by the counsel of the applicant are not relevant except judgment no.3 on the basis of transaction the account of the applicant has been seized by the police personals.

In the instant matter the police has started preliminary inquiry and on the basis of the police report they have submitted that there are (indications) of money laundering operation. Further when the fresh report was sought from the police concerned, the IO concerned was asked whether they have concluded the preliminary inquiry/verification so as to furnish the same to the Indian Cyber Crime Coordination Center (14-C) MHA New Delhi. The instant bank account has been seized as per the report in the month of December 2023 on the basis of the suspicious transactions the police is yet to finalize the opinion and to submit the report to the Indian Cyber Crime Coordination Center (14-C) MHA New Delhi. Therefore, the application in hand appears to be pre-mature and is not allowed and the account of the accused is not allowed to be defreezed at this point of time however, the police official shall also taken up the inquiry to its logical conclusion in the time bound manner. Application is dismissed and is disposed off, be consigned to records after due compilation.

Announced
04.03.2024

TABASUM Digitally signed by TABASUM
Ms Tabasum (UID No: JK-00173)
Judge Small Causes
Srinagar