

W.P.No.25631 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.09.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.25631 of 2024

Mohammed Saifullah

...Petitioner

Vs.

1. Reserve Bank of India,
Rep. by its Governor,
Head Office at
16th Floor, Central Office Building,
Shahid Bhagat Singh Road,
Mumbai 400 001.
2. Additional Director General of Police,
Cyber Crime Wing,
No.3, Dr. Natesan Road, Police Training College Campus,
3rd Floor, Cyber Crime Wing,
Ashok Nagar, Chennai 600 083.
3. HDFC Bank Ltd.,
Rep. by its Principal Nodal Officer,
5th Floor, Tower B, Peninsula Business Park,
Lower Parel West, Mumbai 400 013.
4. The Regional Director,
Reserve Bank of India,
Fort Glacis, No.16, Rajaji Salai,
Chennai 600 001.



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5. The Branch Manager,
HDFC Bank Ltd.,
No.6/1, 1st Main Road, Dayalu Nagar,
Srinivasa Nagar, Near Don Bosco School,
Villivakkam, Tiruvallur 600 049.

6. The Superintendent of Police,
Cyber Crime Division -1,
Cyber Crime Wing,
No.3, Dr. Natesan Road, Police Training College Campus,
3rd Floor, Cyber Crime Wing,
Ashok Nagar, Chennai 600 083.

.. Respondents

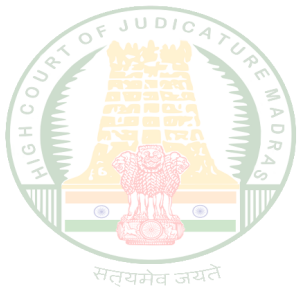
Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the fifth respondent to dispose of the petitioner's representation dated 23.07.2024 by defreezing the petitioner's account bearing Account No.:50100456613718 and IFSC Code:HDFC0004221 and releasing the entire amount of Rs.9,69,580/- plus the amount of Rs.2,48,835/- held by the fifth respondent.

For Petitioner : Mr.Kably Taiyab Khan

For Respondents : Mr.S.Udayakumar
Government Advocate (Crl. Side)
for RR2 & 6
Mr.C.Mohan
for M/s.King & Patridge, for RR 3 & 5

R1 & R4- not ready

ORDER



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The issue by many of the citizens currently face is the freezing of the account on instruction from the local Police or from the National Cyber Crime Reporting Portal. Many a times, the account holders have been taken into surprise that by such order of freezing, before they could realize as to why and for what purpose the accounts are freezed, enough damages are caused to their day to day financial life, since the very life-line of the business gets severed by such unilateral orders of account freezing passed by the Police.

2. No doubt, the statutes empower the investigation agency to request the Bank to freeze the account pending investigation and intimate it forthwith to the jurisdiction Court, but whether the power is properly exercised or not is the moot question now looming large and in the several judgments of the Courts across the India, it had been categorically held that there cannot be freezing of account perpetually without intimating the account holders what for their account is freezed and what extent it has to be freezed. Even then, day in and day out, this Court receives applications to defreeze the account pointing out the failure of the investigating agency not only to the account holders, even to the jurisdictional Court not intimating about the freezing of the account as



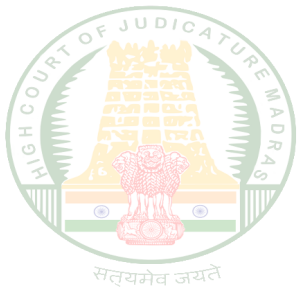
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per Section 102 of Cr.P.C. equivalent to 106 of BNSS Act.

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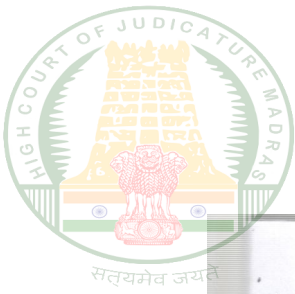
3. This is a case where the petitioner who is suspected to be dealing with cryptocurrency, the case is under investigation by the Cyber Crime Bureau of Cyberabad, Telangana, registered on 16.05.2023. The fifth respondent Bank has been instructed to freeze the account of the petitioner herein. The communication received by the Bank indicates that around Rs.2,48,835/- is the suspected money involved in the subject matter of the crime under investigation. Meticulously, in reference to the instructions received from National Cyber Crime Reporting Portal and the notice from the Telugana Cyber Crime Bureau, the fifth respondent has freezed the account.

4. In the said account of the petitioner a sum of Rs.9,69,580/- stands as balance. Even after lapse of more than a year neither the Investigating Agency nor the Bank had informed the petitioner as to why the account is freezed and how long the account will be kept under freeze. In the said circumstances, the petitioner is before this Court seeking for Mandamus to release the entire amount in his account by ordering de-freezing of the account.



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WEB COPY 5. When similar issues came up for consideration in Crl. OP No.10569 of 2021 vide order dated 18.06.2021, the learned Judge of his Court, directed the Commissioner of Police, Vepery, Greater Chennai, to give necessary instructions and directions to his personnel in conducting investigation in cases where freezing of account is required and ensure that there is no colourable exercise of power. Accordingly, the Commissioner of Police, Greater Chennai, Vepery, vide Circular Memorandum dated 24.06.2021, has issued a directional instructions to all the Deputy Commissioners of Police in District and CCB, CWC to ensure that there is no deviation of the instructions. It is appropriate to reproduce the circular.



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Office the
Commissioner of Police
Greater Chennai Police,
Vepery, Chennai-07.

C.No. 131 /COP, GCP/Camp/2021,

Dated: 24 .06.2021.

CIRCULAR MEMORANDUM

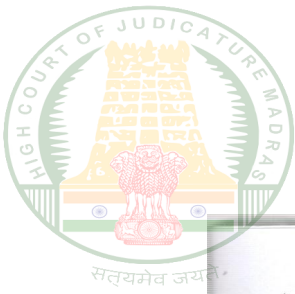
Sub: Instructions for seizure and freezing of account – Issued -
Regarding.

Ref: Order of Hon'ble High Court of Madras in
CrI.O.P.No.10569/2021, dated. 18.06.2021.

Investigating Officers adopt the procedure established by law and circulars are issued from time to time to enhance the quality of investigation. Whenever some lacuna is noted, it has to be attended to so that the stake holders of justice delivery system effect action with minimum hindrance to public. In this connection an instance has come to notice in the referred court order, wherein the IO has frozen an insurance company's genuine account creating obstacle in their genuine business.

In view of the directions of the Hon'ble High Court, the following instructions are issued, when the bank accounts are to be acted upon.

1. IOs shall follow the due process of calling for
 - (i) Suspension of account
 - (ii) Freezing of account and
 - (iii) Forfeiture of account during investigation into Bank accounts
2. Before issuing a notice U/s 102 Cr.P.C, for freezing any account the Investigating Officer should apply his/her mind to take all precaution so that no inconvenience is caused to genuine account holders.
3. While investigating the frauds through online, the Investigating Officer will direct the banker to suspend the account initially for a period of 3 days. This is imperative to avoid any diversion of crime proceeds by the accused would cause irreparable loss to the victims.

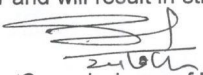


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4. On the same day, notice be issued to the account holder/suspect/accused either under section 41 (A) Cr.P.C or 91 Cr.P.C. as is required.
5. If the account holder/suspect/accused does not turn up for investigation for the said notice the Investigating Officer shall issue a further notice under section 102 Cr.P.C to freeze the account until further order either from the Investigating Officer or from the court.
6. In case of any freezing of bank account, there should be an FIR. Without FIR, freezing bank account should not be entertained.
7. A notice is to be issued to the Banks / NBFCs with the specific mention of section 102 Cr.P.C for any freezing of account by the Investigating Officer.
8. In case of freezing account for investigation, the same should be intimated to the jurisdictional court immediately and account holder, if known, as per procedure U/s 102 Cr.P.C.
9. The frozen account holder, if it be a third party other than the accused, shall be summoned, examined and freezing or otherwise should be finalised, at the earliest.
10. If the account had flow of fraudulent money and much more than that was available, with orders of the immediate Supervising Officer in writing, the freezing should be applied to the extent of fraudulent proceeds.
11. The Investigating Officer will critically look for forfeiture of the balance available in the account holder/suspect/accused account by adopting due procedure established by law, if found involved.

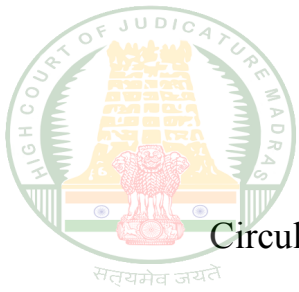
All the Deputy Commissioners of Police in Districts and CCB, CWC should ensure that there should not be any deviance hereafter and will result in stringent action, if noticed.


Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai-07.

To

All Additional Commissioners of Police in Greater Chennai Police.
All Joint Commissioners of Police in Greater Chennai Police.
All Deputy Commissioners of Police in Greater Chennai Police.

6. Unfortunately, in most of the cases the guidelines issued in this



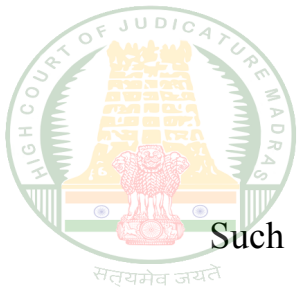
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Circular not observed. Later when an identical issue came up for consideration before this Court in WP No.13509 of 2024 considering the dictum laid down by the Hon'ble Supreme Court in *M.T.Enrica Lexie and another –vs- Doramma and others* reported in *MANU/SC/0409/2012, Teesta Atul Setalvad and others –vs- The State of Gujarat and others*, reported in *(2018) 2 SCC 372* and *Shento Varghese –vs- Julfikar Husen and others*, reported in *2024 SCC Online SC 895*, directed the petitioner/account holder to execute a bond undertaking to deposit the amount in case the money found in his account is a tainted money and liable to be forfeited.

7. As far as the present case in hand, though the intimation from the Cyber Crime Bureau, Telangana, indicates that suspected money in the account of the petitioner is only a tune of Rs. 2,48,835/-, due to the blanket order to freeze the account, the fifth respondent Bank has freezed the account in its entirety. Therefore, the petitioner herein is unable to operate his account and deal with the money lying in his account.

8. Under the guise of investigation, order freezing the entire account without quantifying the amount and period cannot be passed.



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Such order will be construed as violation of the fundamental rights of trade and business as well as violation of livelihood. Therefore, it is appropriate to direct the fifth respondent to de-freeze the account and kept a lien over a sum of Rs.2,50,000/-. The petitioner herein is permitted to operate his account, subject to the condition that he shall ensure, the account shall always have a minimum of Rs. 2,50,000/-.

9. With the above directions, this Writ Petition is disposed of.

There shall be no order as to costs.

10.09.2024

jv

Internet: Yes/No

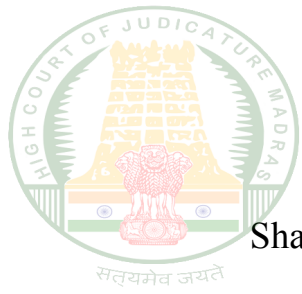
Index: Yes/No

speaking order/ Non Speaking order

Neutral Citation: Yes/No

To

1. The Governor,
Reserve Bank of India,
Head Office at
16th Floor, Central Office Building,



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Shahid Bhagat Singh Road, Mumbai 400 001.

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6. The Superintendent of Police,
Cyber Crime Division -1,
Cyber Crime Wing,
No.3, Dr. Natesan Road, Police Training College Campus,
3rd Floor, Cyber Crime Wing,
Ashok Nagar, Chennai 600 083.
7. The Public Prosecutor,

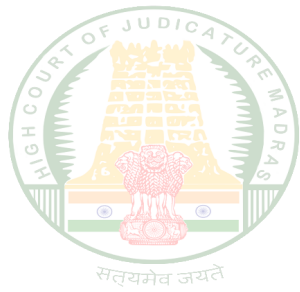


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High Court of Madras,
Chennai.

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Dr.G. JAYACHANDRAN, J.

jv

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