

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 02nd OF SEPTEMBER, 2023

WRIT PETITION NO. 19771 OF 2020

BETWEEN:-

**SHRI BISWAJIT MONDAL, SON OF LATE MILAN
KUMAR MONDAL, PERMANENTLY AND
PRESENTLY RESIDING AT 499/C, ANADAMATH,
POST OFFICE: ICHAPORE, DISTRICT NORTH-24-
PARGANA, PIN CODE-743144, WEST BENGAL.**

.....PETITIONER/PLAINTIFF

(BY SHRI ASHISH SETHI - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH,
THROUGH THE SECRETARY, DEPARTMENT
OF HOME (POLICE), GOVERNMENT OF
MADHYA PRADESH, DISTRICT BHOPAL
M.P., PIN CODE : 462 008.**
- 2. CYBER CRIME POLICE BHOPAL, 3RD
FLOOR, NEW POLICE CONTROL ROOM,
JAHANGIRABAD, BHOPAL, PIN CODE: 462
008.**
- 3. BRIJIKISHORE GARG, (SUB-INSPECTOR),
CYBER CRIME POLICE BHOPAL AT 3RD
FLOOR, NEW POLICE CONTROL ROOM,
JAHANGIRABAD, BHOPAL, PIN 462 008.**
- 4. PUNJAB NATIONAL BANK (PREVIOUSLY
KNOWN AS UNITED BANK OF INDIA), A
BANKING COMPANY ESTABLISHED UNDER
THE RELEVANT LAWS OF INDIA HAVING
ONE OF ITS BRANCHES AND CARRYING ON
BUSINESS AT 142/3, GHOSHPARA ROAD,**

**GARULIA BRANCH, POST OFFICE:
SHYAMNAGAR, DISTRICT NORTH-24
PARGANAS, PIN CODE: 743 127 OUTSIDE
THE JURISDICTION AFORESAID**

.....RESPONDENTS

**(NO. 1 AND 2 BY SHRI PUNEET SHROTI – GOVERNMENT
ADVOCATE)**

(NO. 3 BY NONE)

**(NO.4 BY SHRI PRAVEEN KUMAR CHATURVEDI –
ADVOCATE)**

Reserved on: 03.07.2023

Pronounced on: 02.09.2023

*This petition having been heard and reserved for orders, coming
on for pronouncement this day, the Court pronounced the following:*

ORDER

Petitioner has filed this petition under Article 226 of the
Constitution of India claiming the following relief:

“7.1 To issue a writ of mandamus commanding
the respondent authority no. 2 to issue
directions/instructions upon the respondent no. 3
to retrieve/restore the bank account of the
petitioner, bearing Account No. 0129010351355.

7.2 To acquit the petitioner from Fraud Comp.
No. ASP/C – 186/19, Cyber Crime Bhopal.

7.3 A writ in the nature of certiorari to issue
directions upon the respondent no. 2 above

named so that all the necessary papers/documents with regard to the instant matter be forthwith transmitted before this Hon'ble Court and on such perusal and after hearing both sides be pleased to pass such other order(s) which this Hon'ble Court may deem fit and proper;

7.4 Rule NISI in terms of prayer (a) and (b) above;

7.5 Pass such order or further order or orders as Your Lordships may deem fit and proper.

7.6 And your petitioner, as in duty bound, shall ever pray."

2. The main grievance, as reflects from the submission made by the learned counsel for the petitioner and also from the pleadings made in the petition is that the account of the petitioner bearing Account No. 0129010351355 has been frozen and communication in this regard has been made to the petitioner on 27.07.2020 but despite that, nothing has been done. From the said communication, it reveals that a complaint was made to the Cyber Crime Bhopal registered as Comp. No. ASP/C – 186/19 in which allegation was made against the present petitioner that he has committed fraud of Rs. 33,000/- with the complainant Prateek Bharadwaj with whom some communication was made by the petitioner for giving some office premises on rent but that transaction failed between the parties, although amount was deposited by the complainant in the account of the petitioner. On the basis of the said complaint, the Cyber Crime Police Bhopal communicated the Bank for freezing the Bank account of the petitioner and as such action taken in the year 2019.

3. Reply has been filed by the respondents/State stating therein that the enquiry is still going on and petitioner has been called by the police for recording his statement but he is not turning up to the Police Station and as such enquiry could not be completed. However, there is no material available on record indicating that any enquiry to ascertain the facts mentioned in the complaint has been made or any investigation was done by the enquiry officer to ascertain the fact whether transaction alleged to have been made by the complainant with the petitioner is actually done or not.

4. Learned counsel for the petitioner has pointed out that the respondents in their reply have admitted the fact that they have not followed the mandatory requirement as provided under Section 102(3) of Cr.P.C. intimating the Magistrate about their action of freezing the account of the petitioner. He has submitted that as such all proceedings are illegal.

5. Considering the submissions made by the learned counsel for the petitioner and on perusal of reply submitted by the respondent Nos. 1 and 2 so also the reply of the respondent No. 4-Bank in which they have stated that there is no direct role of the Bank and they have acted as per the instructions given by the respondent Nos. 1 and 2, this Court is of the opinion that though investigation is going on and on the complaint made by the complainant that the amount which he had paid to the petitioner has been deposited in Account No.0129010351355, the petitioner's bank account has been freezed by the Bank but there is no provision under which any account can be freezed. However, as per sub-section (3) of Section 102 of Cr.P.C., the account can be seized by the police during the course of investigation but it cannot be freezed and as such, since the matter is of 2020, investigation is initiated, therefore, till

now it must have been completed. The respective provision i.e. sub-section (3) of Section 102 of Cr.P.C. is reproduced hereinbelow for ready reference:-

“(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, 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.]

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of Sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

6. Accordingly, the action taken by the respondents, in my opinion is illegal. The bank account of the petitioner bearing account No.0129010351355 lying in the Punjab National Bank shall be permitted to be carried out by the petitioner. The respondents although have submitted in their reply that if account is permitted to be operated, the amount which is deposited in his account can be withdrawn by the petitioner. In view of the above, till the pendency of the case, it is directed that withholding the amount alleged to have been deposited i.e. Rs.33,000/- in respect of other amount, the petitioner can operate his bank account. However, for withdrawal of the said amount, the petitioner may seek permission from the concerning trial Court.

7. With the aforesaid, the petition stands **allowed and disposed of.**

(SANJAY DWIVEDI)
JUDGE