

**IN THE COURT OF SH. HARJYOT SINGH BHALLA, CMM,
ROUSE AVENUE DISTRICT COURTS,
NEW DELHI**

CBI Vs. Deepak Talwar & Ors
RC-DAI-2017-A-0036

22.06.2020

Present: None.

ORDER

1. By this order, I propose to dispose of the application of the applicant Wave Hospitality Pvt. Ltd. for de-freezing of bank account/FDRs.
2. During the course of the arguments, Ld. Counsel for the applicant relied upon the decision of Single Judge of Hon'ble Delhi High Court, namely, **Muktaben M. Mashru vs State Of Nct Of Delhi**, CRL.M.C. 4206/2018 & CrI.M.A.30311/2018, decided on 29.11.2019, in which the decision in Swaran Sabharwal v. Commissioner of Police, 1987 SCC OnLine Del 221 and also the judgment passed by the Division Bench of the Bombay High Court in Shashikant D. Karnik v. State of Maharashtra, 2007(109) BOMLR 934, wherein it was held that the requirement of Section 102 Cr.P.C. is necessary to be complied with and non-compliance of the same renders the order illegal and perverse have been referred and relied upon alongwith the judgment of the Madras High Court titled as T. Subbulakshmi & Anr. v. The Commissioner of Police & Ors., 2013 SCC OnLine Mad 2629, which reiterates that the seizure has to be reported forthwith to a magistrate which is a necessary requirement and if the requirement is not fulfilled, then the seizure cannot be legally sustained.. He pointed out that in **Muktaben's** case the Hon'ble Delhi High Court has accepted the proposition that a seizure under Section 102 of Cr.PC must be immediately reported to the concerned Magistrate. It was further urged on the basis of the said judgment that the property seized under Section 102 of Cr.PC must also have nexus with the crime committed.

3. Ld. Counsel for the applicant has pointed out that in the present case the seizure was never reported to the concerned Magistrate in the format prescribed by the rules nor it has any nexus with the crime committed. He has pointed out that the seizure in the present case took place in December 2017 and till date the IO was unable to point out as to how the said account/FDRs were related to the crime committed. He emphasized that till date, it was not the case of the Investigating Agency that amount lying in the account/FDRs could be considered as crime proceeds. In fact, he emphasized that the Enforcement Directorate, which was also investigating the money laundering aspect of the alleged crime, had not seized the said accounts/FDRs and has excluded the same from the complaint made by the said department to the ED court concerned.

4. A specific query was put to the IO regarding reporting of the seizure to the concerned Magistrate in December 2017. The IO fairly conceded that no specific/separate intimation of seizure of the account/FDRs was given to the area Magistrate. He stated that the said fact was mentioned in the case diary which was put before the concerned Magistrate/CMM from time to time and the case diary stood signed by him. When the IO was specifically asked about the dates when this fact was brought to the notice of the concerned Magistrate/CMM through case diary, he was unable to give any specific answers and he stated that no such dates were available with him.

5. Going back to the decision of the Hon'ble High Court of Delhi in **Muktaben** (*supra*), it was categorically observed by the High Court that

“36. Now reverting back to the present petition, taking into consideration the oral as well as the written submissions of both the parties and also taking into consideration the material on record as well as the legal position, more specifically in view of the judgments discussed hereinabove, this Court has no hesitation to hold that the reporting of the freezing of bank accounts is "mandatory". Failure to do so, apart from other conditions, will vitiate the freezing of bank account, which should be “forthwith” reported to the concerned Magistrate and non-compliance of this mandatory requirement goes to the root of the matter. If there is any violation in following the procedures under Section 102 of the Cr.PC, the freezing of the bank accounts cannot be legally sustained.

6. Thus, it was the duty of the IO to immediately report seizure of a case property to concerned Magistrate, as also he could only have seize a property, connected or concerned with the crime. In the present

case, I find that prima facie both conditions have not been fulfilled till date. Even otherwise, more than 2 years have elapsed since seizure of the property and still the IO is unable to conclude whether the accounts seized can be or cannot be considered as crime proceeds.

7. Be that as it may, equities need to be balanced for all concerned in the present case and therefore, in case the Investigating Agency comes to a conclusion that amount lying in the account/FDRs is crime proceeds the money may no longer be available if released simplicitor. Therefore, in all fairness, considering that seizure has continued for more than 30 months, it is directed that the amount lying in the account/FDRs may be released to the applicant subject to the applicant furnishing a bond that he shall produce the amount before the court as and when directed. It is further directed that the applicant shall furnish a surety/security or a bank guarantee equal to the value of the amount lying in the account/FDR to the satisfaction of the court before the same can be released. Application is disposed off accordingly.

**HARJYOT
SINGH BHALLA** Digitally signed by
HARJYOT SINGH BHALLA
Date: 2020.06.22
16:52:08 +05'30'

Harjyot Singh Bhalla
CMM/RADC/New Delhi
22.06.2020

State Vs. Ashwani Tomar
FIR No. RC-17(A) 2018-DLI
PS CBI

22.06.2020

Present: Sh. Jai Hind Patel, Ld. APP for CBI.

Ms. Pooja, counsel for accused/applicant.

In view of the prevailing pandemic of COVID-19 as per the directions of Hon'ble High Court and Ld. District & Sessions judge, Rouse Avenue District Courts, the application for furnishing of bail bonds of applicant/accused is being heard through video conferencing using CISCO-WEBEX App from my own residence. The VC link has been sent by the Reader of the Court.

It is noticed that the bail bonds which have been scanned and sent alongwith an e-mail are unsigned. Therefore, it is directed that the Ld. Counsel shall submit duly signed bail bonds alongwith original FDRs with the IO who shall verify the same and file his report on 24.06.2020.

A fresh scanned copy of the signed bail bonds shall also be mailed to the e-mail ID of the court maintained by the Reader attached to the Court.

Bail bonds/ FDRs etc. shall be retained by the IO and he shall file the same with chargesheet/supplementary chargesheet when the court resumes normal functioning.

HARJYOT SINGH BHALLA Digitally signed
by HARJYOT
SINGH BHALLA
Date: 2020.06.22 16:49:05 +05'30' Harjot Singh Bhalla
CMM/RADC/New Delhi
22.06.2020