

**AFR****HIGH COURT OF CHHATTISGARH, BILASPUR****WPCR No. 306 of 2022**

- Sandrio Steel and Alloys Private Limited Through Its Authorized Representative Having Its Office At Ashok Nagar, Hill No. 3, Kurla West, Mumbai, Maharashtra 400070. --- **Petitioner**

**Versus**

1. State Of Chhattisgarh Through Ps Urla, Raipur, District Raipur, Chhattisgarh.
2. Indusland Bank Through Branch Manager, Raipur, District Raipur, Chhattisgarh.
3. M/s Navkar Trading, Through Its Authorized Representative Having Its Office At B-216, Marketing Yard, Bedi, Rajkot, Gujarat 360003

**---- Respondents.****WITH****WPCR No. 313 of 2022**

- Sunnybourne Projects Private Limited Through - Its Authorized Representative Having Its Office At A/3, Siddhi Nagar Path Pethi, Asalpha V.L.G., Andheri, Ghatkopar, Mumbai, (Maharashtra)

**---- Petitioner.****Versus**

1. State Of Chhattisgarh Through Ps Urla Raipur, District Raipur, Chhattisgarh.
2. Indusland Bank, Through Branch Manager, Raipur, District Raipur Chhattisgarh.
3. M/s Navkar Trading , Through Its Authorized Representative Having Its Office At B-216, Marketing Yard, Bedi, Rajkot, Gujrat 360003

**---- Respondents.***CAUSE TITLE TAKEN FROM CIS PERIPHERY*

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For Applicant : Mr. Kishore Bhaduri, Senior Adv.  
with Mr. Pankaj Singh, Adv.

For Respondent/State : Mr. Alok Nigam, GA.

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**Hon'ble Shri Justice Deepak Kumar Tiwari**

**Order On Board**

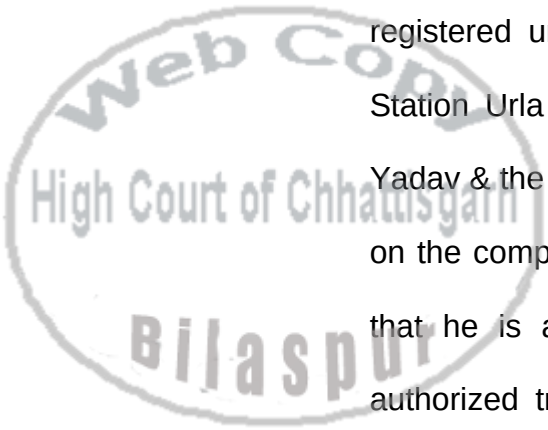


**30.03.2022**

The aforesaid writ petitions are being disposed of by this common order as similar issue is involved for adjudication.

2. These writ petitions (criminal) have been preferred challenging the notice dated 22.02.2022 issued by SHO, Police Station Urla, District Raipur (CG) in connection with Crime No.52/2022 dated 16.02.2022 registered for the offence under Section 409 IPC whereby direction/request was made to the respondent No.2/Indusland Bank to freeze/hold the bank account No.259428833992, consequent of which respondent Bank has frozen the said account.

3. Facts of the case, in brief, are that a criminal case has been registered under the Crime No.52/2022 dated 16.02.2022 at Police Station Urla for the offence under Section 409 IPC against Hemraj Yadav & the driver of his truck and Ravi Verma & the driver of his truck on the complaint of one Vivek Agrawal. The said complainant alleges that he is a partner of Jai Jagdish Transport and his agency is authorized transporter for Hira Ferro Alloys Limited and Alok Ferro Alloys Limited. The said companies allegedly placed an order to Jai Jagdish Transport to transport silico-manganese to ICD Mihan and ICD Borkheri from their respective factories situated at Urla, Raipur in lieu of which, silico-manganese was transported. Allegedly, on 12.02.2022, Jai Jagdish Transport received complaint that the silico-manganese so received is adulterated upon which an inspection was carried out from which it is revealed that the said complaint is indeed true for which accused persons are responsible for being the owners and drivers of the trucks which were used for the purpose of transportation. Thereafter, during the investigating the respondent/State made a request/direction to the respondent No.2/Bank to freeze the account





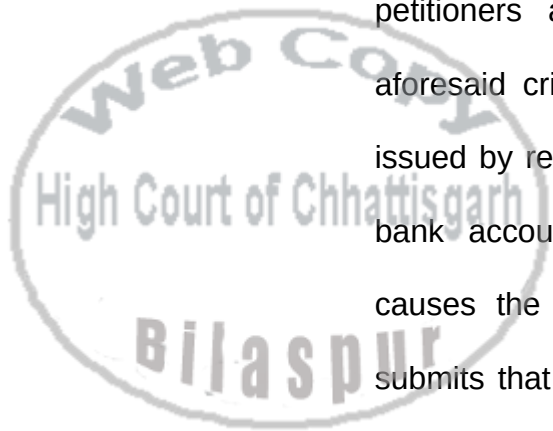
mentioned above.

4. Learned counsel for the petitioners submits that both petitioners/Company in the course of their routine business, had placed an order to respondent No.3 for supplying one container of coriander seeds and Jeera (cumin) respectively for the purpose of their export and for the said purpose Rs.44 Lacs and Rs. 50 Lacs respectively were deposited in the Bank Account No.259428833992 on 22.02.2022 as was directed by the respondent No.3. The petitioner supplied the ledger of the bank account but respondent No.3 did not respond to the order and on enquiry it was revealed that the concerned account was seized during investigation. It is submitted that the petitioners and their transactions were not connected with the aforesaid crime but still the blanket and sweeping direction/request issued by respondent No.1/State to the transaction officer to hold the bank account without verifying the transactions ultimately which causes the huge loss to the petitioners. Learned counsel further submits that action taken by the respondent/State under Section 102 Cr.P.C. is beyond the scope as the petitioners have fundamental rights to trade any business. Thus, these writ petitions are filed to issue appropriate direction to respondents to enabling the petitioners to withdraw/re-claim their amount deposited in the account in question.

5. On the other hand, learned State counsel submits that alternative remedies under the statutory law are available for the petitioners therefore, these writ petitions are not maintainable and therefore, liable to be dismissed.

6. Heard learned counsel for the parties and perused the petition along with documents annexed minutely.

7. In the case of **State of Maharashtra Vs. Tapas D. Neogy**





reported in (1999) 7 SCC 685 has settled the law relating to seizure of bank accounts. The bank accounts are held to be property capable of seizure. In the said case in Paragraph 12 it is stated as under:-

**“12. Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be “property” within the meaning of the said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore, persuaded to take the view that the bank account of the accused or any of his relations is “property” within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into. The contrary view expressed by the Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law. It may also be seen that under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the courts in fixing the amount of fine shall take into consideration the amount or the value of the property which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to**





above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon. ....”

8. The action of seizing a movable property, which includes freezing of the Bank account, is taken under Section 102 of the Cr.P.C. which reproduced hereinunder:-

**“102. Power of police officer to seize certain property.— (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:**

**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.”**

9. In *Vinoshkumar Ramachandran Valluvar Vs. State of Maharashtra* reported in *2011 SCC OnLine Bom 402* it was observed as under:-





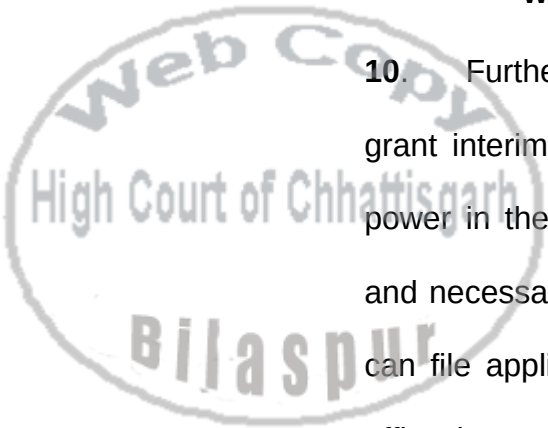
**“18. It is, therefore, clear that like any other property a bank account is freezable. Freezing the account is an act in investigation. Like any other act, it commands and behoves secrecy to preserve the evidence. It does not deprive any person of his liberty or his property. It is necessarily temporary *i.e.* till the merit of the case is decided. It clothes the Investigating Officers with the power to preserve a property suspected to have been used in the commission of the offence in any manner. The property, therefore, requires to be protected from dissemination, depletion or destruction by any mode. Consequently, under the guise of being given information about the said action, no Accused, not even a third party, can overreach the law under the umbrella of a sublime provision meant to protect the innocent and preserve his property. It would indeed be absurd to suggest that a person must be told that his Bank account, which is suspected of having been used in the commission of an offence by himself or even by another, is being frozen to allow him to have it closed or to have its proceeds withdrawn or transferred upon such notice.”**

**10.** Furthermore, Section 451 of Cr.P.C. enables the trial Court to grant interim custody pending trial. Similarly, Section 457 also vests power in the Magistrate to deal with the property as deemed proper and necessary. An accused whose property is seized by police officer can file application to grant interim custody. This is an effective and efficacious remedy. Section 457 of Cr.P.C. for ready reference is reproduced here-in-under:-

**“457. Procedure by police upon seizure of property.**

**(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.**

**(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may**





**detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.”**

**11.** From the aforesaid analysis, it appears that petitioners ought to have approached the jurisdictional Magistrate seeking to grant interim custody of the property seized and therefore, when an alternative remedy is available, writ petition is not maintainable.

Though under Article 226 of the Constitution of India, the jurisdiction of the writ Court is very wide and all pervading wherever and whenever, by the conduct/decision of a public authority rights of a person are infringed. But the constitutional Courts are slow in entertaining the writ petitions where statutory scheme envisages certain procedures and aggrieved party has statutorily engrafted remedies.

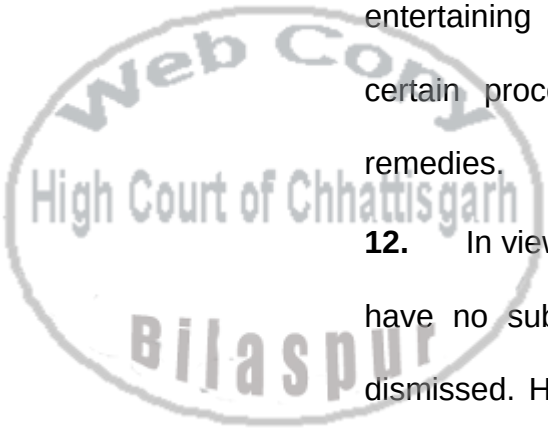
**12.** In view of the above, this Court is of the view that these petitions have no substance and the same deserve to be and are hereby dismissed. However, the petitioners are at liberty to avail appropriate remedy as available to them under the Code of Criminal Procedure. If any application is preferred before the Criminal Court then the said Court is directed to hear and decide the matter as expeditiously as possible, according to law. It is made clear that this Court has not expressed any opinion on the merits of the case.

**13.** With the aforesaid observations, these writ petitions stand disposed of.

Sd/-

**(Deepak Kumar Tiwari)  
Judge**

*Ajay*





### HEADLINES

Freezing bank account during investigation being a property, the concerned Judicial Magistrate is having jurisdiction to consider the application for interim custody. Therefore, the writ petition is not maintainable.

बैंक खाते में जमा राशि संपत्ति होने से अन्वेषण के दौरान उसके संव्यवहार पर रोक लगायी गई, संबधित मजिस्ट्रेट को उक्त खाते की अंतरिम अभिरक्षा प्राप्त करने हेतु प्रस्तुत आवेदन पत्र पर विचारण की अधिकारिता है। अतः रिट याचिका पोषणीय नहीं है।

