



[2025:RJ-JD:26095]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 3311/2025

1. Smt. Kailash Kanwar Rathore W/o Hukam Singh, Aged About 50 Years, R/o Farara, Ps Rajnagar, Dist. Rajsamand, Raj.
2. Vikram Singh S/o Hukam Singh, Aged About 24 Years, R/o Farara, Ps Rajnagar, Dist. Rajsamand, Raj.
3. Narayan Singh S/o Hukam Singh, Aged About 29 Years, R/o Farara, Ps Rajnagar, Dist. Rajsamand, Raj.

-----Petitioners

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s)	:	Mr. Divik Mathur Mr. Pravin Kumar Choudhary
For Respondent(s)	:	Mr. Deepak Choudhary, AAG Mr. Kuldeep Kumpawat, AAAG Mr. Laxman Ram Bishnoi, SHO. P.S. Kelwa, District Rajsamand

HON'BLE MR. JUSTICE MANOJ KUMAR GARG

Order

REPORTABLE

27/05/2025

The present misc. petition under Section 528 B.N.S.S/482 Cr.P.C. has been filed by the petitioner against the order dated 26.03.2025 passed by learned District Judge, Rajsamand in Criminal Case No. 20/2025 whereby, the learned Judge dismissed the revision and affirmed the order dated 23.01.2025 passed by Chief Judicial Magistrate, Rajsamand dismissing the application filed by the petitioners against de-freezing their Bank accounts in connection with



FIR No. 147/2024 registered at Police station Rajnagar, District Rajsamand.

Briefly, the facts of the case are that the complainant Pushkar Patidar has lodged an FIR No. 147/2024 against the main accused Hukam Singh and other persons including the present petitioners for offence under Sections 420, 406, 381, 120-B IPC. During investigation, the police freezed the Bank accounts of the petitioners. Being aggrieved, the petitioners preferred an application before the Chief Judicial Magistrate, Rajsamand who dismissed the said application vide order dated 23.01.2025. Being aggrieved, the petitioners preferred a revision petition before the learned Sessions Judge, Rajsamand, which too came to be dismissed.

Learned counsel for the petitioners submits that the primary allegation of embezzlement pertains exclusively to the main accused, Hukam Singh, and Bhim Singh. It is noteworthy that the bank account of Hukam Singh has already been frozen; however, the present petitioners, who are the wife and sons of Hukam Singh, are not alleged to have committed any act of embezzlement. Counsel further contends that the investigating agency has indiscriminately frozen the petitioners' bank accounts and halted all transactions therein, despite the absence of any direct nexus with the alleged offence. Such action, he argues, is arbitrary and unlawful. It is also argued that the petitioners are duly registered Income Tax payers, and all their transactions are transparent and accountable. Consequently, the freezing of their entire bank accounts amounts to an unjust deprivation



of their right to carry on lawful business activities. Additionally, even if the powers under Section 102 of the Criminal Procedure Code are assumed to be applicable, the freezing of the petitioners' bank accounts is illegal for want of compliance with the mandatory provisions of Section 102(3) of the Cr.P.C., which stipulates that such action must be reported to the concerned Magistrate. Learned counsel emphasizes that investigating authorities cannot circumvent the procedural safeguards prescribed under criminal law. Therefore, he submits that the impugned orders are liable to be quashed, and a direction be issued to the bank to permit the petitioners to operate their bank accounts freely. Learned counsel for the petitioner placed reliance on the judgment of Delhi High Court in the case of **Muktaben M. Mashru Vs. State of NCT of Delhi & Ors** reported in **2019 : DHC 6520** and order passed by co-ordinate Bench of this Court in the case of **Shree Radhe Enterprises Vs. Reserve Bank of India & Ors** (S.B. Civil Writ Petition No. 7177/2025) decided on **01.05.2025**.

Per contra, learned Public Prosecutor contended that the authority of the investigating officer to seize an article pursuant to Section 102 of the Criminal Procedure Code remains unimpaired, and that even the absence of a formal report to the concerned Magistrate regarding such seizure does not *ipso facto* invalidate the seizure itself.

The investigating officer present in person candidly acknowledged that no information regarding the seizure of the bank account, in accordance with Section 102 of the



Cr.P.C., which mandates reporting such seizure to the concerned magistrate, was conveyed to the concerned magistrate. It is evident that this requirement has been demonstrably violated in the present case.

I have heard learned counsels for the parties and carefully gone through the entire material on record.

The unwarranted freezing of bank accounts by investigating authorities in a mechanical manner has emerged as a growing concern confronting Indian businesses and corporate entities. Such actions are frequently predicated solely on mere allegations or suspicions that tainted funds have been credited into the accounts of innocent parties, be they business entities or individuals, without the necessity of the accused being formally charged or even named in the First Information Report (FIR). Consequently, accounts may be frozen during the course of investigations, irrespective of the account holder's direct involvement in any offence. This practice can severely impair the operational functioning of a business and inflict significant financial hardships upon the concerned parties, often plunging them into dire straits.

In this discourse, this Court seeks to delineate the statutory procedural safeguards and legal position on this issue and expound on the legal remedies available to an aggrieved party in cases of arbitrary freezing of bank accounts. Therefore, to understand the scope of powers that the investigating authorities possess to freeze a bank account, one needs to dive into the source of the power



itself. This source can be traced to Section 102 of the Code of Criminal Procedure, 1973. The purpose of Section 102 of the Cr.P.C. is to secure the property which has been or suspected to be stolen or which has a direct nexus with the commission of a crime from being 'disposed of' or 'destroyed'. Such a measure of seizing property ensures that the court is able to get back the property concerned. Section 102 of the Cr.P.C. falls under Chapter VII which deals with the 'Processes to Compel the Production of Things'. The provision states:

(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, 2[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.]

After perusal of the Section 102(3) of the Cr.P.C. it is clear that the investigation officer shall forthwith report the seizure to the Magistrate having jurisdiction. The Hon'ble Supreme Court of India and High Courts of the different States repeatedly held that the provision under Section 102(3) of Cr.P.C. requires that the police officer shall forthwith report the seizure to the Magistrate having jurisdiction. In the case on hand, the account was frozen during investigation and the same was not informed to the concerned Magistrate concerned even till now. Thus, the condition contemplated under Section 102(3) of Cr.P.C. to forthwith report the seizure before the Magistrate has not been complied with.

On an analysis of Section 102 of the Cr.P.C., the following broad essentials emerge:

- a) The use of the terms such as 'seize' and 'produce' as included in the provision indicate that the phrase 'any property' as used under Section 102 of the Cr.P.C. will apply only to movable property and excludes immovable property.



b) For the purpose of Section 102 of the CrPC, the property must be either:

Alleged or suspected to have been stolen; or

Have a nexus between the property and the commission of the crime.

It is noteworthy that the most frequently violated condition under Section 102 pertains to the requirement of informing the Magistrate about the seizure of property. Specifically, Section 102(3) of the Cr.P.C. mandates that "every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction." A breach of this mandatory procedural requirement often provides the judicial basis for courts to order the de-freezing of bank accounts, thereby safeguarding the rights of the parties involved.

The Madras High Court in the case of **T. Subhulakshmi Vs. The Commissioner of Police and Ors.** Reported in **2013 (3) MWN (Cr.)** has observed that:-

"27 From the dictum laid down in the judgments relied on by the learned senior counsel for the petitioners it is clear that the bank account is a property within the meaning of Section 102 of Cr.P.C. and sub-section (3) to Section 102 requires the reporting of seizure of the property to the concerned Magistrate forthwith, which is mandatory in nature. Moreover, the freezing of bank account is an act of the investigation and therefore, the duty is cast upon the Investigating Officer under Section 102(3) of Cr.P.C. to report the same to the Magistrate, since the freezer of the bank account prevents the person from operating the bank account pursuant to an



investigation by the Police in a criminal case registered against him. If there is any violation in following the procedures under Section 102 of Cr.P.C., the freezing of the bank account cannot be legally sustained. Since in the case on hand the 2nd respondent-Police has not reported the freezing of the bank accounts of the petitioners herein to the concerned Magistrate forthwith, which is mandatory under Section 102(3) of Cr.P.C., the proceedings of the 2nd respondent-Police in freezing of the bank accounts of the petitioners herein are not legally sustainable."

The Delhi High Court in the case of **Muktaben M.Mashru v. State (NCT of Delhi)**, decided on 29.11.2019, held that if the procedures under Section 102 are not followed, the freezing of the Bank Account is not legally sustainable. The relevant paragraphs are extracted below:

"31. In the case of T.Subbulakshmi v. The Commissioner of Police (supra), it was held that if there is any violation in following the procedures under Section 102 Cr.P.C., the freezing of the Bank Account cannot be legally sustained. Freezing of Bank Account is an act of investigation by the police and therefore, duty is cast upon the IO under Section 102 Cr.P.C. to report the same to the Magistrate forthwith as freezing prevents a person from operating his Bank Account.

32. Further, in the case of Uma Maheswari v. State rep. by Inspector of Police, MANU/TN/2766/2013, the Court held that reporting of the freezing of the Bank Accounts is mandatory. Failure to do so will vitiate the freezing of the bank account. It shall be reported 'forthwith' to the jurisdiction Magistrate. The phrase 'shall' employed in Section 102(3)



Cr.P.C. is held to be mandatory in nature and violation of it goes to the root of the matter.

33. Recently, in the case of Manish Khandelwal v. State of Maharashtra, MANU/MH/2041/2019, decided on 30.07.2019, the Court rejected the contention that non-compliance of the procedure laid down under Section 102 Cr.P.C. is only an irregularity and will not vitiate freezing of the Bank Accounts. It was held that in case the mandatory provision under Section 102 Cr.P.C. has not been followed then it would entail the consequence of giving directions to defreeze the Bank Account. The duty of reporting to Magistrate any seizure of Bank Account is cast upon the IO as freezing of the Bank Account prevents the person from operating the Bank Account pursuant to investigation. If there is any violation in following the procedures under Section 102 Cr.P.C, freezing of account cannot be legally sustained."

In the case of **Uma Maheswari & Anr. v. State rep.**

by Inspector of Police, decided on 29.11.2019, the Court held that reporting of the freezing of the bank accounts is mandatory. Failure to do so will vitiate the freezing of the bank account. It shall be reported 'forthwith' to the jurisdiction magistrate. The phrase 'shall' employed in Section 102(3) Cr.P.C. is held to be mandatory in nature and violation of it goes to the root of the matter. The relevant portions of the aforesaid judgment reads as under:

"33. In seizing the properties, the investigating officer has to follow certain procedures. That has been prescribed in Section 102 Cr.P.C. It runs as under:



"102. Power of police officer to seize certain property.-

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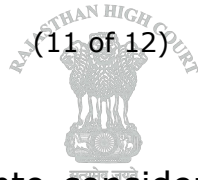
41. In pursuing investigation under Section 102 Cr.P.C., the Code empowered the police officers to deprive a person of his properties. In this context, the phrase, "shall" employed in Section 102(3) Cr.P.C., is held to be mandatory in nature. Violation of it goes to the root of the matter.

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44. The Investigation Officer has suspected that the moneys swindled were secreted by the accused persons in their Bank accounts. Thus, he took steps to freeze the Bank accounts.

45. We have elaborately seen that such freezing of the Bank accounts shall be reported to the jurisdiction Magistrate. When it is to be reported has been stated in Section 102(3) Cr.P.C. It is stated therein that it shall be reported "forthwith" to the jurisdiction Magistrate. The reporting of the freezing of the Bank accounts is mandatory. Failure to do so will vitiate the freezing of the bank account. In this back drop of the matter, the word "forthwith" shall mean 'immediately', 'without delay', 'soon'.

46. In this case, the freezing of the Bank accounts were done on 30.04.2013 and on 3.5.2013. However, the Investigation Officer has reported this to the learned XI Metropolitan Magistrate, Saidapet only on 27.6.2013. This will not be reporting of the freezing of the Bank account to the Magistrate forthwith. Thus, there is breach of mandatory requirement of law. Thus, the freezing of the Bank accounts is vitiated."



Therefore, taking into consideration the submissions of both the parties as the legal position and judicial pronouncements, 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.P.C., the freezing of the bank accounts cannot be legally sustained.

Additionally, the above discussion leads to the conclusion that, while delay in forthwith reporting the seizure to the Magistrate may only be an irregularity, total failure to report the seizure will definitely have a negative impact on the validity of the seizure. In such circumstances, account holders like the petitioners, most of whom are not even made accused in the crimes registered, cannot be made to wait indefinitely hoping that the police may act in tune with Section 102 and report the seizure as mandated under Sub-section (3) at some point of time.

In this view aforesaid discussion, the Criminal Misc. Petition is hereby allowed. The impugned orders dated 26.03.2025 passed by learned District Judge, Rajsamand in Criminal Case No. 20/2025 and the order dated 23.01.2025 passed by Chief Judicial Magistrate, Rajsamand refusing to de-freeze the Bank accounts of the petitioners are hereby set



aside, and it is hereby directed to the bank to de freeze the accounts of the present petitioners. However, in the interest of justice, it would be appropriate to impose a condition whereby the petitioners shall execute bonds before the Trial Court, undertaking to produce the requisite amount in Court whenever required.

Stay application is also disposed of.

(MANOJ KUMAR GARG),J

3-BJSH/-

