IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 321 OF 2025

(Mr. Kartik Yogeshwar Chatur Vs. Union of India & Ors.)

WITH CRIMINAL WRIT PETITION NO. 664 OF 2025

(Mr. Dilip Gopaldas Duwani Vs. Union of India & Ors.)

WITH CRIMINAL WRIT PETITION NO. 660 OF 2024

(Dinshaws Dairy Foods Private Limited Vs. Union of India & Ors.)

WITH CRIMINAL WRIT PETITION NO. 315 OF 2025

(Mr. Surendra Ramrao Geed Vs. Union of India & Ors.)

WITH CRIMINAL WRIT PETITION NO. 424 OF 2025

(Mrs. Rajani Suresh Mangalani Vs. Union of India & Ors.)

WITH CRIMINAL WRIT PETITION NO. 665 OF 2025

(Mr. Dev Dilip Duwani Vs. Union of India & Ors.)

WITH CRIMINAL WRIT PETITION NO. 799 OF 2025

(Mr. Gaurav Rajesh Mehta Vs. Union of India & Anr.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

WP 321/2025
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Ms M. Lalsare, Counsel for respondent no.4 (through VC).
WP 664/2025
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WP 660/2024
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WP 315/2025
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WP 424/2025
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WP 665/2025
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WP 799/2025
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CORAM : ANIL L. PANSARE AND
RAJ D. WAKODE, JJ.
NOVEMBER 20, 2025

The common question that requires answer in these petitions is, whether an Investigating Agency has power to debit freeze an account under Section 106 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) ?

2] There is no dispute that in all these petitions, the accounts of the petitioners have been debit freezed under Section 106 of the BNSS. The reason why the accounts are debit freezed is that there occurred some cyber fraud, and that, part of amount of the alleged fraud has been credited to the accounts of the respective petitioners.

3] We have, accordingly, heard the Counsels for both sides, and have gone through the record to find that in some cases, the Investigating Agency has issued a communication to the Bank to debit freeze the accounts of the respective petitioners, however, in many cases, even such communication is not issued to the Bank, at least, the communication is not placed before us by the concerned Bank. It is, thus, a mystery as to how the Bank chose to debit freeze the accounts of their own.

4] We, accordingly, permit respective petitioners to seek compensation, if so desired, for such an action, by filing appropriate proceedings. If such

proceedings are filed, the Court shall decide the same on its own merit. We may mention here that in some cases, the amount has been transferred in terms of the Magistrate's order, which cannot be faulted.

5] So far as Section 106 of the BNSS is concerned, the law is well settled. The High Court of Kerala in the case of *Headstar Global Pvt. Limited Vs. State of Kerala & Ors. [CRL. MC NO. 3740/2025* decided on *2/6/2025],* while dealing with debit freezing of account in an identical situation, took note of a judgment of the Hon'ble Supreme Court in the case of *State of Maharashtra Vs. Tapas D. Neogy [(1999) 7 SCC 685],* wherein, the Supreme Court held that such powers are available to the Investigating Agency under Section 102 of the Code of Criminal Procedure, 1973 (for short "the Code"), which is now replaced by the provisions of the BNSS.

6] The Kerala High Court then referred to Section 102 of the Code to opine that the provision empowers a Police Officer to seize a property, which is either a stolen property or found under circumstances, which created suspicion of commission of any offence. Conversely, the Court held that no police officer can seize any property, which is neither stolen nor found under circumstances, which created suspicion of commission of any offence.

7] The Kerala High Court then referred to two other judgments of the Supreme Court; one in the case of *M.T. Enrica Lexie And Another Vs. Doramma And Others*

[(2012) 6 SCC 760], and another in the case of *Shento Varghese Vs. Julfikar Husen And Others [(2024) 7 SCC 23],* wherein, the Supreme Court explained the scope under Section 102 of the Code. Thereafter, the Kerala High Court observed in paragraph 10 as under :

> *"10. It is pertinent to note that all the above decisions were rendered with respect to Section 102 of the Code of Criminal Procedure and the Code did not contain any provision for seizure or attachment of the proceeds of crime, except under Chapter VII-A dealing with reciprocal arrangements with other countries for assistance in attachment and forfeiture of property in a contracting state. This lacuna is cured by retaining Section 102 of the Criminal Procedure Code as Section 106 and including Section 107 in the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS" for short). …."*

8] Thus, the Kerala High Court, taking note of the subsequent judgments of the Supreme Court, held that the Code did not contain any provision for seizure or attachment of the proceeds of crime, except under Chapter VII-A dealing with reciprocal arrangements with other countries. The Court then took note of the lacuna that occurred in Section 102 of the Code, and observed that the same has been cured by keeping Section 106 in BNSS, which is akin Section 102 of the Code, and by adding Section 107 in BNSS.

9] Taking cognizance of these provisions, the Kerala High Court held thus :

> *"12. Going by Section 107 of BNSS, a police officer investigating a crime has to approach the jurisdictional Magistrate seeking attachment of any property believed to be derived directly or indirectly from criminal*

> *activity or the commission of an offence. The Magistrate may thereupon order attachment after hearing all parties concerned or issue an interim order for attachment, if issuing notice to the owner will defeat the purpose of attachment and seizure. After confirming that the attached property is the proceeds of crime, the Magistrate can direct the District Magistrate to distribute the property among those affected by the crime. Thus Section 107 confers the jurisdictional Magistrates with explicit authority to act swiftly in cases involving proceeds of crime.*
>
> *13. Another aspect of importance is that, while Section 106 speaks of seizure, Section 107 deals with attachment, forfeiture and restoration. Seizure under Section 106 can be carried out by a police officer and an ex post facto report submitted to the Magistrate. On the other hand, attachment under Section 107 can be effected only upon the orders of the Magistrate. The logic behind this distinction being that the purpose of seizure is more to secure the evidence during an investigation, whereas attachment is intended to secure the proceeds of crime by preventing its disposal and thus ensuring its availability for legal procedure such as forfeiture and distribution to the victim/s."*

10] Thus, the Kerala High Court, in clear terms, held that a police officer investigating a crime has to approach jurisdictional Magistrate under Section 107 of the BNSS to seek attachment of any property believed to be derived directly or indirectly from a criminal activity or commission of an offence. Subsequent course will have to be adopted in terms of order passed by the Magistrate. The Court further clarified that while Section 106 speaks of seizure, Section 107 deals with attachment, forfeiture and restoration. Seizure under Section 106 can be carried out by a police officer, and *ex post facto* report submitted to the Magistrate. On the other hand, attachment under

Section 107 can be effected only upon order of the Magistrate. The logic behind this distinction being that the purpose of seizure is more to secure evidence during investigation, whereas, attachment is intended to secure proceeds of crime by preventing its disposal and, thus, ensuring its availability for legal procedure such as forfeiture and distribution to the victim/s.

11] Thus, the judgment makes it clear that debit freezing account is not permissible under Section 106 of the BNSS.

12] The judgment of Kerala High Court was challenged before the Supreme Court in SLP being SLP (Cri.) No. 13433/2025, where the Supreme Court declined to interfere with the said judgment.

13] That being so, the law stands well settled that under Section 106 of the BNSS, an Investigating Agency has no power to attach or debit freeze an account.

14] In that view of the matter, the orders, which are passed by the Investigating Agency in respective petitions under Section 106 of the BNSS are liable to be quashed and set aside.

15] We may note here that there is, in place system to deal with the financial fraud, which is titled as 'Citizen Financial Cyber Frauds Reporting and Management System'. This system has been published by the Indian Cybercrime Coordination Centre, which comes under the Ministry of Home Affairs, Government of India. Our attention is invited to FAQs, particularly, FAQ No.21.

The said question and answer would throw further light as to how Banks should deal with reports/ communications received from an Investigating Agency. FAQ No. 21 and its answer reads as under :

> *"21. Whether the Bank can block/withhold the funds on the basis of the complaint's acknowledgement number that gets reported on the helpline number or NCRP ?*
>
> *Yes, Bank/intermediaries can put the disputed amount on lien on the basis of the complaint's acknowledgement number so that amount can be refunded later, after investigation of the complaint by concerned State/Uts LEAs."*

16] As could be seen, Bank/intermediaries can put the disputed amount on lien, but cannot debit freeze the account.

17] Despite such status, some Banks upon receiving certain communications from Investigating Agency, which does not even call for debit freezing accounts, are proceeding to debit freeze the accounts of the account holders resulting into losses to their day-to-day affairs.

18] Put all together, it is abundantly clear that an Investigating Agency has no power of attachment/debit freezing a Bank Account under Section 106 of the BNSS.

19] The Investigating Agency may, however, proceed in terms of Section 107 of the BNSS to debit freeze or attach a Bank Account.

20] So far as Banks are concerned, they should act in terms of the Management System, mentioned

above, unless there is an specific order of debit freezing an account by a competent authority.

21] With the aforesaid observation, we allow the petitions partly. The orders passed under Section 106 of the BNSS in respective petitions debit freezing the accounts of the petitioners stand quashed and set aside.

22] The petitions are disposed of in terms of above.

(JUDGE) **(JUDGE)**

Sumit