
(2020) 01 DEL CK 0395

In the Delhi High Court

Case No : Criminal Writ Petition No. 3107 Of 2019, Criminal Miscellaneous
Application No. 43014 Of 2019

Leela Devi

APPELLANT

Vs

Narcotic Cntrol Bureau

RESPONDENT

Date of Decision : 24-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 482

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 21, 29, 68F, 68F(2)

Citation : (2020) 01 DEL CK 0395

Hon'ble Judges : Rajnish Bhatnagar, J

Bench : Single Bench

Advocate : Vikas Gautam, Rajesh Manchanda

Final Decision : Disposed Of

Judgement

Rajnish Bhatnagar, J

1. Heard the counsel for the parties and perused the record.
2. The petitioner has filed the present petition with the following prayers:

"It is therefore most respectfully prayed that the directions under Article 226 of Constitution of India R/W Section 482 Cr.P.C. in writ of Mandamus for issuance of directions to the respondent for defreezing Current Bank Account No.18381131000527 of Petitioner Leela Devi in Oriental Bank of Commerce which was freezed out in Session Case no 427/2019 pending trial in the Court of Shr. Ajay Kumar Jain, Special Judge (NDPS Act)/ASJ, New Delhi in case titled as Narcotic Control Bureau Vs Vinay Kumar Ray & Ors filed under section 21, 29 NDPS Act.

It is further prayed that necessary directions may be issued for investigating officer for misleading the Ld Special Judge, NDPS Act by giving the statement that financial investigation is still pending without filing any documents in this

regard and stating under which provision of law the financial investigation is pending and by making the statement that the Ld Special Judge have no jurisdiction to entertain the application for defreezing the bank account of wife of Petitioner once the Freezing order bearing no VIII/07/DZU/2019-1398 dated 22/05/19 for freezing bank account no 18381131000527 of the Petitioner was not confirmed by the Competent Authority as stipulated under Section 68 F(2) of NDPS Act."

3. On 05.11.2019 the respondent was directed not to take any action on notice bearing F.No.CA/DL/NDPS/51/19-20/1960 dated 31.10.2019 issued by the competent authority.

4. Thereafter the respondent moved CRL. M.A. 43014/2019 seeking clarification/modification of the order dated 05.11.2019. It is averred in the application that the present writ petition was filed to challenge the letter dated 22.05.2019 issued by the intelligence officer of the respondent (hereinafter called the I.O.) whereby the IO of the case has written a letter to the concerned bank to stop out going transactions from account No. 18381131000527 of O.B.C. bank, Main Road, Chirag Delhi. It is averred that the petitioner had initially filed an application for de-freezing of account before the Special Judge, NDPS Act and this application was dismissed vide order dated 30.10.2019. It is averred that the IO of the case in accordance with the provisions of Chapter V-A under section 68-F and other related Sections given in Chapter V-A of the NDPS Act freezed the account of the petitioner on 30.10.2019 and the same was sent for confirmation of the said order in accordance with law and as per the provisions the competent authority within 30 days of the passing of the order was to decide whether to give confirmation or not.

5. It is averred that the present writ petition has been filed on the basis of issuance of letter dated 22.05.2019 to O.B.C. Bank but the said letter has not been placed before the Court at the time of filing of the writ petition and the freezing order dated 30.10.2019 passed by the IO has also not been placed on record. This order dated 30.10.2019 was sent to the competent authority for its confirmation on 31.10.2019. It is submitted that the interim order of the stay of the proceedings on the basis of notice dated 31.10.2019 has been procured by misrepresentation as this Court has referred the prayer of the writ petition which only refer the freezing order bearing No. VIII/07/DZU/2019-1398 dated 22.05.2019 whereas the account was not freezed by virtue of the said order and the bank was only directed to stop outgoing transactions as the proceedings to freeze the said account were in progress. It is averred that as the said account contained illegally acquired money so the IO had freezed the account of the petitioner vide order dated 30.10.2019 which is not under challenge in this writ petition. It is averred that the issuance of the notice dated 31.10.2019 by the competent authority was on account of freezing of the account of the petitioner vide freezing order dated 30.10.2019. It is stated that in view of this, the petition is infructuous and not maintainable as the order dated 22.05.2019 was

only an interlocutory letter and the petitioner has not challenged the freezing order dated 30.10.2019 and the notice of the competent authority dated 31.10.2019 which was given on the passing of the freezing order dated 30.10.2019.

6. It is further submitted that as per the procedure, the freezing order had to be confirmed or declined within 30 days of the passing of the order, meaning thereby the competent authority had time upto 29.11.2019 to confirm or decline the said freezing order but since the order of stay was passed on 05.11.2019, so no action could be taken on the basis of the notice bearing No. F.No.CA/DL/NDPS/51/19-20/1960 dated 31.10.2019 issued by the competent authority, therefore the competent authority was not in a position to conclude the process of confirming or declining the freezing order dated 30.10.2019 which is not under challenge. It has also been averred that the time for completion of the proceedings by the competent authority to either confirm or decline the freezing order be extended by 25 days from the date of disposal of this petition so that clear 30 days as prescribed under the Act are available to the competent authority to decide the freezing order passed by the IO on 30.10.2019.

7. In the instant case, by virtue of this writ petition the petitioner has only challenged the order dated 22.05.2019 bearing No. VIII/07/DZU/2019-1398 which according to the petitioner has been issued for freezing the bank account No. 18381131000527 of OBC Bank. The perusal of the letter dated 22.05.2019 shows that this is an intimation to the manager of the OBC in regard to the above said account requesting him to immediately stop outgoing transactions from this account. The freezing order has been passed by the IO on 30.10.2019 which was to be sent for confirmation to the concerned competent authority as stipulated U/s 68 F(2) of NDPS Act which was accordingly sent by the IO on 31.10.2019 to the competent authority for confirming or declining the said freezing order and the time prescribed for this procedure is 30 days as per section 68 F(2) of the NDPS Act. The petition filed by the petitioner is, therefore, liable to be dismissed as there is no challenge to the freezing order dated 30.10.2019 and in any case it was sent for confirmation to the competent authority on 31.10.2019 by the IO. The competent authority had 30 days time to either confirm or decline the freezing order but the petitioner came running to the court without laying any challenge to the present order dated 30.10.2019. The petition is not maintainable as there being no challenge to the freezing order dated 30.10.2019, so the same is dismissed. However, since the proceedings have been stayed by virtue of the order dated 05.11.2019, so the time for completion of the proceedings by the competent authority as per provisions of section 68F(2) of NDPS Act is extended for 25 days from the date of disposal of this writ petition. With these directions the petition and the CRL. M.A. 43014/2019 are disposed of.