

(2010) 12 DEL CK 0170

In the Delhi High Court

Case No : Writ Petition (Criminal) 835 of 2010

Vikas Kumar

APPELLANT

Vs

D.R.I.

RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 68F(1),
68F(2)

Citation : (2011) 1 JCC 61

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Kamal J.S. Mann, for the Appellant; Satish Aggarwala, for the Respondent

Judgement

Hima Kohli, J.—The present petition is filed by the Petitioner under Article 226 of the Constitution of India read with Section 482 of the CR.PC, seeking inter alia for issuance of directions to the Respondent to defreeze the bank accounts of the Petitioner, his mother, Smt. Jeewanlata and his two brothers, Mr. Jitender Kumar and Mr. Himanshu.

2. It is stated by the counsel for the Petitioner that the Petitioner was arrested on 09.10.2001 in case SC No. 4/04 before Special Judge, NDPS on the allegation that one Mr. Satpal Juneja, who was found in possession of 4.740 kg. heroin at IGI Airport, New Delhi, had named the Petitioner in his disclosure statement. He submits that upon being released on bail, the Petitioner found out that his bank accounts and that of his family members had been frozen by the Respondent vide letters dated 17.05.2002 (Annexure P-1). In the said letters, the Respondent had informed the concerned banks, namely, Bank of Punjab Ltd., Model Town, Jalandhar (Punjab), Punjab National Bank, Urban Estate, Phase-I, Jalandhar (Punjab) and HDFC Bank Ltd, 35, G.T. Road, Jalandhar (Punjab) that no further transfer/withdrawal from such accounts/FDR/Lockers may be allowed

by them without obtaining clearance from the Directorate.

3. It is submitted by the counsel for the Petitioner that the Petitioner had filed an application before the Special Judge, NDPS praying inter alia for defreezing of his account and that of his family members, which was rejected vide order dated 20.10.2009. Aggrieved by the aforesaid rejection order, a revision petition was preferred by the Petitioner, registered as Crl. Rev.P 644/2009, which was withdrawn by him while seeking liberty to file appropriate legal proceedings, for impugning the order of the Respondent, freezing the bank accounts of the Petitioner and that of his family members without complying with the mandatory requirement of Section 68F(2) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short "Act"). The order dated 05.05.2010 passed by the High Court in the aforesaid revision petition is enclosed with the present petition.

4. Notice was issued on the present petition vide order dated 03.06.2010. A reply has been filed by the Respondent. There is no specific denial by the Respondent in response to the categorical stand taken by the Petitioner that the provisions of Section 68F(2) of the Act have not been complied with by the Respondent, inasmuch as the order of freezing of bank accounts passed by the Department has not been confirmed by the competent authority within a period of 30 days from the date of the said order being passed. Counsel for the Respondent, however, states that as the proceedings are still pending before the Special Judge, NDPS, it would not be appropriate for the Court to direct defreezing of the bank accounts.

5. On a pointed query posed in respect of the stand of the Petitioner with regard to the mandatory permission required to be sought from the competent authority for confirmation of the orders of freezing of bank accounts passed in respect of the Petitioner, pursuant to the letters dated 17.05.2002 issued by the department, counsel for the Respondent submits that the record does not reflect any such confirmation order, though he does not deny the fact that it is a mandatory obligation on the competent authority to confirm such an order.

6. In this view of the matter and having regard to the mandatory provision of Section 68F(2) of the Act, which stipulates that any order passed under Sub-section (1) of Section 68F shall have no effect unless the same is confirmed by an order of the competent authority within a period of 30 days from the date of its being made, and considering the fact that in the present case, the orders dated 17.5.2002 freezing the bank accounts of the Petitioner and his family members have not been confirmed by the competent authority, it is directed that the accounts of the Petitioner and that of his family members in the Bank of Punjab Ltd., Model Town, Jalandhar (Punjab), Punjab National Bank, Urban Estate, Phase-I, Jalandhar (Punjab) and HDFC Bank Ltd, 35, G.T. Road, Jalandhar (Punjab), frozen by the Respondent vide letter dated 17.05.2002 be defreezed forthwith.

7. The petition is disposed of.