



2026:CGHC:23236-DB
AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPCR No. 231 of 2026

1 - Oxyzo Financial Services Ltd. A Company Incorporated Under The Provisions of The Companies Act, 2013, Having Its Registered Office At Shop No. G-22c, (Ugf) D-1 (K-84), Green Park Main, New Delhi 110016, Through Its Authorized Representative Mr. Utkarsh Rai, S/o Rajesh Kumar Rai, Aged About 31, Authorized Representative Of The Petitioner Company.

--- **Petitioner(s)**

Versus

1 - State of Chhattisgarh Through Secretary, Department of Home Affairs, Mantralaya, Mahanadi Bhawan, Nava Raipur, Atal Nagar, District Raipur (C.G.) 492002.

2 - Director General of Police Police Headquarters, Nava Raipur, Chhattisgarh- 492002.

3 - Mr. Ashish Yadav Station House Officer, Police Station Mandir Hasaud, District Raipur (C.G.) 492101.

4 - Investigating Officer Mr. Suresh Chandra Yadav, ASI, Ps Mandir Hasoud, Raipur (C.G.) 492101.

5 - City Superintendent of Police Mana, Near Mana Camp Bus Stand, Mana Airport Road, Raipur, Chhattisgarh- 492015

6 - City Superintendent o Police Nava Raipur, Police Headquarters, Sector-19, Rakhi, Naya Raipur, Chhattisgarh 492002

7 - Superintendent of Police Raipur, District Raipur, Civil Lines, Raipur, Chhattisgarh 492001.

8 - Kotak Mahindra Bank Limited Wholesale Business Vertical, Asset Area 9, 5th Floor, Ibis Commercial Block, Hospitality District, Igi Airport, New Delhi 110037

9 - Shreejikrupa Project Ltd (Skpl) Through Its Authorized Signatory Sector-5, Plot No. B-61, B-52, Shreejikrupa Project Limited, Kamal Vihar, Near Kps Junior School, Kaushalya Mata Vihar, Raipur Chhattisgarh- 492004.

--- **Respondent(s)**

(Cause-title taken from Case Information System)

For Petitioner	:	Shri Abhishek Sinha, Sr. Advocate along with Shri Vivek Chopda, Advocates.
For State	:	Shri Praveen Das, Additional Advocate General.
For Respondent/ Shreejikrupa Project Ltd.	:	Shri Pragalbh Sharma and Shri Rishabh Garg, Advocates.

Hon'ble Shri Justice Ramesh Sinha, CJ

Hon'ble Shri Justice Ravindra Kumar Agrawal, J

Order on Board

15.05.2026

Per, Ramesh Sinha, CJ.

- 1 The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner seeking following reliefs:

“10.1 A writ and/or an order in the nature of writ of certiorari do issue calling for records and quashing the Impugned Letter dated 13.04.2026 (Annexure P-16) illegally, arbitrarily, and malafidely issued by Respondent No. 3 to Respondent No. 8 for holding/freezing an amount of Rs. 53,47,17,835/- in the bank account of the Petitioner.

10.2 A writ and/or an order in the nature of writ of mandamus do issue directing Respondent No. 8 to unconditionally defreeze and remove the hold/lien, if any on the Petitioner's bank account bearing No. 9913203430 in its entirety.

10.3 A writ of certiorari or any other appropriate writ against Respondent No. 3 as to how they could have frozen a bank account of a lending institution without probable cause or notice;

10.4 A writ of certiorari or any other appropriate writ against Respondent No. 4 to 6 as to how they could have given approvals and nod to Respondent No. 3 to freeze a bank account of a lending institution without probable cause or notice;

10.5 A writ and/or an order in the nature of writ of mandamus do issue directing Respondent No. 2 to set up a high-level inquiry against Respondent Nos. 3 to 6 and take strict disciplinary and penal action against delinquent and errant officials for abuse of process and acting as recovery agents.

10.6 A writ and/or an order in the nature of writ of mandamus do issue against Respondent No. 1 to compensate for the loss of goodwill, reputation, and actual loss of business to the petitioner caused by this persecution”

- 2 Brief facts of the case are that, the petitioner is a Non Banking Financial Company (in short, NBFC) duly registered with the Reserve Bank of India as well as under the Companies Act, 2013. It has its registered office at Shop No.G-22-C (UGF) D-1, Green Park Main, New Delhi and engaged in business of providing credit solutions and customized loan facilities to help SMEs expand operations. The

petitioner account number 9913203430 with the Kotak Mahindra Bank, (Respondent No.8) at Ibis Commercial Block Aerocity New Delhi. There was regular receiving of rupees 12-15 Crores in daily in the form of return of loans (EMIs) from its borrowers into this account. The commercial loan transaction between the petitioner and respondent No.9 -Shreejkrupa Project Ltd. commenced in the year, 2023 and on 30.01.2026 they entered into a Purchase Financing Facility for an amount of Rs.10,00,00,000/-for 12 months with interest of 14.25 percent per annum. Subsequently, on 02.02.2026 a Master Facility Agreement (MFA) was executed between them and the respondent No.9 availed the said facility to finance its purchase of raw materials from several suppliers. It came to know to the petitioner company that suppliers from whom the respondent No.9 purchased the raw material, was OFB Tech. Ltd. which engaged in different business of trading of raw material and commodities and has separately contracted with respondent No.9. There was transaction between OFB and respondent No.9 since 2022 and the petitioner has no nexus in the transaction between OFB and respondent No.9.

- 3** On 20.03.2026, the respondent No.9 lodged a report to the police of Police Station Mandir Hasaud, Raipur, with the effect that they had a contract for construction of Women Hostel at Nawa Raipur and they placed their order for supply of TMT Iron Bar to OFB Amhedabad. The said consignment was to be supplied through the respondent No.9 to G&D Ispat Pvt. Ltd. Raipur. On 07.03.2026, the said TMT iron bar was sent through three Trucks bearing registration Nos. CG-04-JC-6215 (41.770 MT Iron bar), CG-04-JC-2484 (37.950 MT Iron bar) and also

CG-04-JC-1381 (32.080 MT Iron bar). On 08.03.2026 and 09.03.2026 when the said Trucks i.e. CG-04-JC-1381 and CG-04-JC-2484 reached to its destination, the consignment was unloaded, however, on suspicion that consignment was underweight and then on being inspected the Trucks through which the consignment was supplied, it was found that in a secret box prepared in the Truck, 5 MT Pig iron were found by which the total load of the truck including consignment was found to be its correct, however, the actual weight of consignment was found to be underweight and thereby about 10 MT of iron bar was less supplied. Likewise, Truck No.CG-04-MS-9932 was also found less consignment than its actual consignment and 5 MT iron bar was found less from its actual weight. Thus, the Drivers of the aforesaid Trucks committed cheating with the collusion of other persons. On the report made by the respondent No.9, FIR of Crime No.148 of 2026 was lodged on 20.03.2026 for the offence under Sections 318(4) and 3(5) of BNS, 2023. During investigation, notices have been issued under Section 179 of BNSS 2023 on 25.03.2026, 01.04.2026 and 03.04.2026 to the Directors of OFB and the petitioner was informed on 10.04.2026 from respondent No.8 bank that their bank account No.xxxx3430 has been totally freezed. Due to sudden freezing of the bank account of the petitioner, the financial transaction of the petitioner company got paralyzed and petitioner issued a detailed e-mail dated 12.04.2026 to the respondents requesting for defreezing of his account disclosing financial hardship. The petitioner, on 11.04.2026 issued a demand-cum-loan recall notice to the respondent No.9 terminating the credit facility on the ground of breach of terms and

conditions and demanded outstanding dues. In response to the loan recall notice, the respondent No.9 replied that they are ready to remit the outstanding dues by the next working business days subject to reconciliation of the final amount as per their records and asked to share final outstanding statement with detailed break up and bank details to enable remittance. On 12.04.2026 the petitioner again sent e-mail to the respondent No.9 that its repayment rights are absolute and on 13.04.2026 after reconciling the account, the respondent No.9 remitted a sum of Rs.4,45,13,465/- through RTGS to the petitioner and cleared its loan liability.

- 4 The petitioner, aggrieved by the total freeze of bank account, approached the Delhi High Court by filing WP(Cr) No.1189 of 2026 in which an interim order was passed on 13.04.2026 directing that the effect and operation of the freeze communication dated 10.04.2026 through e-mail shared by the Kotak Bank, shall remain stayed. The Delhi High court also directed the petitioner to delete the respondents No.3 to 8 and to file amended memo of party and amended writ only confined to action against the erring bank i.e.. Kotak Bank Ltd. Subsequent to issuance of demand-cum-loan recall notice by the petitioner to the respondent No.9, he with the collusion of respondent No.3 totally froze the petitioners bank account in a blanket and mechanical attempt to overreach the interim protection granted by Delhi High Court and the respondent No.3 issued a fresh communication on 13.04.2026 directing the bank to defreeze the account to comply with the court order and also directed to hold/lien an amount of Rs.53,47,17,835/-. Despite having knowledge of the order

passed by Delhi High Court on 13.04.2026 and personally communicated the order to the respondent No.3 by the authorized representative of the petitioner, the letter dated 13.04.2026 has not been withdrawn by the respondent No.3. Holding of huge amount of Rs.53,47,17,835/- without any basis is completely malafide. Total loss assessed by the complainant in the FIR was about Rs.6.9 Lakhs and for that Rs.53,47,17,835/- was put on hold which are highly disproportionate. The petitioner is a highly regulated NBFC having daily cash flow to maintain statutory liquidity ratio and operational viability. By stopping transaction of Rs.53,47,17,835/- of a public money, the respondent authorities are effectively pronouncing the petitioner company on a death bed. It is also case of the petitioner that the action of the respondent No.3 completely dehors the provisions of Section 107 of BNSS, 2023. Under the statutory scheme, the police officer is duty bound to obtain a prior order from the jurisdictional Magistrate and the jurisdictional Magistrate, in turn, shall provide a notice and fair opportunity of hearing to the person concerned against whom such order is sought to be passed. There is no application moved before the Magistrate for the same and no opportunity of hearing was granted to the petitioner. Earlier the petitioner had filed WPCR No.217 of 2026 which was dismissed as withdrawn on 21.04.2026 with liberty to file a fresh petition after impleading the complainant as party respondent. The cost imposed upon the petitioner has already been deposited on 23.04.2026.

- 5 During the course of hearing of the petition, this court, vide order dated 28.04.2026 issued notices to respondent No.9 and also called criminal

antecedent against the petitioner with respect to multiple FIRs in the matter. On 05.05.2026 the State counsel was directed to file an affidavit of the Investigating Officer with respect to freezing of amount of the petitioner. On 08.05.2026 an affidavit was filed by the Deputy Superintendent of Police (Rural) (Mana) Raipur, in which they explained that freezing of entire amount of Rs.53,47,17,835/- was not necessary and the Station House Officer, Police Station, Mandir Hasaud, requested the Bank Manager of Kotak Mahindra Bank, Shankar Nagar Branch, to defreeze the account of the petitioner company except to an amount of Rs.43,38,375/- which was the approximate loss assessed in the alleged offence and directed the Bank to permit operations of the remaining amount in account No.9913203430. On 08.05.2026 itself this court directed the Director General of Police, Chhattisgarh, to file his personal affidavit calling upon explanation from the Investigating Officer as to under what circumstances the Bank account of the petitioner has been freezed for the reason that the petitioner submitted that Investigating Officer is required to obtain permission from the competent authority in terms of Section 107 of BNSS and also in view of the alleged misappropriated amount is only Rs.6,90,000/-. To comply with the order dated 08.05.2026, time was sought for by the State as the Investigating Officer was on leave and thereafter on 14.05.2026 an affidavit was filed by the Superintendent of Police, Raipur (Rural) stating therein that an intimation regarding the action of freezing the bank account was forwarded to the concerned jurisdictional Magistrate on 10.04.2026 in compliance of provisions of Section 106 of BNSS, 2023

and the Investigating Officer requested the concerned bank to modify freezing instruction into a hold instruction and this information was also forwarded to the jurisdictional Magistrate Raipur. The police enquired and in view to assess the total loss, the consignments were checked and documents were verified and it was ascertained that shortage of approximately 12.5 percent occurred in each consignment and applying the said ratio, the shortage was calculated about 62.87 MT of iron bar valued at Rs.43,38,375/- and therefore the said amount was requested to be hold to the Bank.

- 6 The matter came up for hearing on 15.05.2026 and parties made their submissions.
- 7 Learned counsel for the petitioner would submit that the respondent No.3 have no right to kept such a huge amount of the petitioner on hold without there being any basis for the same. The petitioner company has no nexus to the alleged offence committed by the respondent company. Before freezing of the bank account or holding amount on the account, the investigating authority is required to obtain mandatory permission from the Superintendent of Police and the concerned Magistrate as required under Section 107 of BNSS. The provisions of Section 107 BNSS must be strictly exercised by following the due procedure and a blanket freeze of the account without quantifying the exact suspected amount is arbitrary and impermissible. The action of the investigating agency itself is suspicious as initially they have freezed the entire amount of Rs.53,47,17,835/- and subsequently they defreezed the bank account and hold Rs.43,38,375/- without quantifying the actual loss, if any, though the

petitioner is not responsible for the said loss. Before freezing bank account of the petitioner no prior intimation whatsoever was given to them and all of sudden freezed their bank account on 10.04.2026. Such non disclosure of essential information is wholly arbitrary and violative of principles of natural justice and cause serious prejudice to the petitioner by depriving them of the opportunity to take timely remedial steps. The petitioner is not named as accused in the FIR and no investigation has been started against the petitioner. Despite that, his bank account has been freezed in the matter in which he has no nexus. The action of the police authority is malafide to extort a third party NBFC, thereby, acting as a private recovery agent. Freezing of petitioners bank account and holding of the amount with the bank for an indefinite period, the respondents have taken away the petitioner's ability to use its own money which amounts to unlawful deprivation of property which violates Article 300-A of the Constitution of India. The right to carry on trade or business includes the freedom to access, utilize and deploy funds forming part of the capital of the business. The petitioner is engaged in lawful activities and impugned action of the respondent authorities freezing bank account without authority of law is violates the petitioners right to carry on his lawful business. Therefore, the impugned letter dated 13.04.2026 may be quashed and the respondent authorities may be directed to unconditionally defreeze and remove the hold/lien on petitioner's bank account bearing No.9913203430 in its entirety. In support of his submission, he relied upon judgment of Bombay High Court in ***Kartik Yogeshwar Chatur Vs. Union of India & Others, 2025 SCC Online Bom 4778.***

- 8 On the other hand, learned counsel for the respondent-State submits that an FIR has been registered before the Police Station Mandir Hasaud, Raipur for the offence under Sections 318(4) and 3(5) of BNS. During investigation it was found that in supply of TMT iron bars there was serious deficiencies in the weight of the iron bars supplied to the consignee. The matter is being investigated from various accounts of the complainant/respondent No.9 and found the amount was paid earlier also through the petitioner in their bank account No. 9913203430 for the purchase of TMT iron bars, but for the total value of TMT bars, less TMT bars were supplied. This was going on since long time and the amount was to be given as payment for supply of iron TMT bars by the off business company due to which the complainant company is found to be suffering an independent loss. The Directors of petitioner company have also been informed to appear for recording statement and to submit information, but they are not turning up and not cooperating with the investigation. The complainant company suffered loss due to shortage of supply and non payment of amount, vide letter dated 10.04.2026 the investigating agency requested the Kotak Mahindra Bank to freeze the bank account No. 9913203430 of off business company of the petitioner till completion of the investigation in the case. The complainant/respondent No.9 failed to provide accurate information regarding payments. The representative of OFB appeared before the police station and stated that the suspicious account was not OFB's account and it was an account of regular banking activities of many people. The said account receives EMI's payment from the customers daily

and therefore vide letter dated 13.04.2026 the amount of Rs.53,47,17,875/- lying the Kotak Mahindra Bank, Shankar Nagar Branch, Raipur, was put on hold of the said account number. He would submit that during the course of investigation in the offence, it transpires that the whole amount of Rs.3,47,17,875/- is not necessarily to be freezed, inasmuch as the fact that the normal expenditure of the company would hamper and therefore vide letter dated 27.04.2026 the investigating agency wrote a letter to the Kotak Mahindra Bank, Shankar Nagar Branch, Raipur to defreeze the account of the petitioner company and to put on hold an amount of Rs.43,38,375/- on the said account and the remaining amount be defreezed in the said account number and now only the said amount of Rs. 43,38,375/- is kept on hold till completion of investigation. He would also submit that under Section 106 of BNSS the investigating officer is only required to submit a report to the concerned jurisdictional Magistrate which the investigating officer rightly did on 10.04.2026 itself. He would also submit that estimated loss comes to Rs. 43,38,375/- as per the calculation made during the investigation with respect to allegation of cheating in supply of short iron TMT Bars and while invoking the powers under Section 106 of BNSS the said amount was kept on hold. Therefore, the petitioner does not have any merit in the petition and the same liable to be dismissed.

- 9 Learned counsel for the respondent No.9/complainant would also submit that the petitioner, on the same cause of action arose on 10.04.2026, approached Delhi High Court by filing WP(Cr.) No.1189 of 2026 in which an interim order was passed on 13.04.2026. Despite

claiming the relief against communication dated 10.04.2026 and pendency of the writ petition before Delhi High Court, he again approached this court by filing the present writ petition and for the same cause of action two separate writ petitions are being prosecuted the petitioner in two jurisdictional courts and therefore the present writ petition is not maintainable. He would refer to the document annexed with the petition Ex.P/13 which is the copy of memo of writ petition filed before the Delhi High Court and would submit that the petitioner, before the Delhi High Court, claiming for defreezing of the bank account which was freezed vide letter dated 10.04.2026 and the relief claimed in that writ petition and present writ petition are identical. The order passed by Delhi High Court on 13.04.2026 have been informed to the investigating officer on 14.04.2026, however prior to that, the investigating officer already issued the communication dated 13.04.2026 for freezing of bank account. When the investigating officer considers the loss which comes about Rs.43 Lakhs, he put on hold the said amount of Rs.43,38,375/- and defreezed the bank account with respect to remaining amount and as of now only Rs. 43,38,375/- is put on hold by the investigating officer which is the approximate loss caused in the present FIR. Therefore, the petitioner does not have any merits in the petition and prayed for dismissal of the same.

- 10** We have heard learned counsel for the parties and perused the material annexed with the writ petition.
- 11** The core question involved in the present writ petition is whether the investigating officer can freeze the bank account of the petitioner against the FIR lodged by the respondent No.9 against the accused

persons. In the present case the petitioner is not arrayed as an accused and his bank account running with Kotak Mahindra Bank, Shankar Nagar Branch, Raipur, has been earlier freezed and vide letter dated 27.04.2026, an amount of Rs.43,38,375/- was put on hold and bank account was defreezed with respect to remaining amount.

- 12** From perusal of communication dated 10.04.2026 issued by the Station House Officer, Police Station Mandir Hasaud Raipur, to Branch Manager, Kotak Mahindra Bank, Shankar Nagar, Raipur, it reveals that in the offence of Crime No. 148 of 2026 lodged at Police Station Mandir Hasaud, during investigation it was found that on the bank account of complainant/respondent No.9 through the petitioner, the payments have been made to the supplier company for purchasing of TMT iron bars, however, the less quantity of TMT bars were supplied for the payments made for ordered consignment and since the payments made through the petitioner's company and they are not cooperating with the investigation and not supplied the requisite information to the investigating officer, his bank account No.9913203430 should be freezed till the completion of investigation. The said order dated 10.04.2026 was challenged before the Delhi High Court in WP(Cr) No.1184 of 2026 in which an interim order was passed on 13.04.2026 by the Delhi High Court and the freeze of the bank account of the petitioner through communication dated 10.04.2026 was stayed till the next date of hearing and the next day of hearing is fixed on 21.09.2026. The relevant part of the order passed by Delhi High Court reads as under:

“3. Learned senior counsel, also relying upon a judgment dated 26.02.2026 passed by this Court in W.P.(C) 1592/2026 titled "Pay 10 Services Private Limited Vs. Union of India" with respect to the maintainability of the present petition, submits that the same is very much maintainable in the present form.

4. Be that as it may, upon the petitioner taking requisite steps within a period of one week, issue notice to the respondents, as per amended memo of parties, by all permissible modes, returnable on 21.09.2026.

5. Keeping in view the nature of the facts and disputes involved, the parties are hereby called upon to file their respective written synopsis instead of reply/ rejoinder not exceeding three pages, giving a chronological list of dates and events and relevant documents, if any, alongwith duly highlighted judgments setting out the propositions of law therein, they wish to rely upon at least one week prior to the next date of hearing.

6. Considering the email dated 10.04.2026 has been issued by the respondent no.2/ Kotak Mahindra Bank Limited on the basis of the letter of the even date issued by the SHO, PS: Mandir Hasaud, District Raipur, Chhattisgarh without giving any semblance of a chance to the petitioner, the direction with regard to the freezing of the bank account of the petitioner, as communicated vide email dated 10.04.2026, shall remain stayed till the next date of hearing.

7. As such, renotify on 21.09.2026.”

13 In the said writ petition filed before the Delhi High Court, initially the petitioner made the investigating agency as the party respondent, however, they have pleaded in paragraph 8.20 of the writ petition that on the direction of the Delhi High they have deleted the respondents No.3 to 8 from that writ petition and confined their petition only against the erring bank i.e. Kotak Mahindra Bank. The said order dated 13.04.2026 passed by Delhi High court was informed by the petitioner to the investigating agency at Police Station Mandir Hasaud on 14.04.2026, however, prior to that another communication was already already issued by the investigating officer on 13.04.2026 for holding an

amount of Rs.53,47,17,835/- and for the remaining amount, the account was defreezed.

- 14** The submissions made by the counsel for the respondents that the investigating agency has invoked its power under Section 106 of BNSS and he has to report the jurisdictional Magistrate after freezing of the amount which is suspected under the alleged offence.
- 15** It is necessary to notice here the provisions of Section 106 of BNSS which reads as under:

“106. 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 503 and 504 shall, as nearly as may be practicable, apply to the net proceeds of such sale.”

16 The petitioner is claiming before freezing bank account, permission was required to be obtained from the Superintendent of Police and the jurisdictional Magistrate as required under Section 107 of BNSS and the same has not been obtained and therefore the entire exercise of the investigating officer vitiates. It is also necessary to notice the provisions of Section 107 of BNSS which reads as under:

“107. Attachment, forfeiture or restoration of property.

(1) Where a police officer making an investigation has reason to believe that any property is derived or obtained, directly or indirectly, as a result of a criminal activity or from the commission of any offence, he may, with the approval of the Superintendent of Police or Commissioner of Police, make an application to the Court or the Magistrate exercising jurisdiction to take cognizance of the offence or commit for trial or try the case, for the attachment of such property.

(2) If the Court or the Magistrate has reasons to believe, whether before or after taking evidence, that all or any of such properties are proceeds of crime, the Court or the Magistrate may issue a notice upon such person calling upon him to show cause within a period of fourteen days as to why an order of attachment shall not be made.

(3) Where the notice issued to any person under sub-section (2) specifies any property as being held by any other person on behalf of such person, a copy of the notice shall also be served upon such other person.

(4) The Court or the Magistrate may, after considering the explanation, if any, to the show-cause notice issued under sub-section (2) and the material fact available before such Court or Magistrate and after giving a reasonable opportunity of being heard to such person or persons, may pass an order of attachment, in respect of those properties which are found to be the proceeds of crime: Provided that if such person does not appear before the Court or the Magistrate or represent his case before the Court or Magistrate within a period of fourteen days specified in the show-cause notice, the Court or the Magistrate may proceed to pass the ex parte order.

(5) Notwithstanding anything contained in sub-section (2), if the Court or the Magistrate is of the opinion that issuance of notice under the

said sub-section would defeat the object of attachment or seizure, the Court or Magistrate may by an interim order passed ex parte direct attachment or seizure of such property, and such order shall remain in force till an order under sub-section (6) is passed.

(6) If the Court or the Magistrate finds the attached or seized properties to be the proceeds of crime, the Court or the Magistrate shall by order direct the District Magistrate to rateably distribute such proceeds of crime to the persons who are affected by such crime.

(7) On receipt of an order passed under sub-section (6), the District Magistrate shall, within a period of sixty days distribute the proceeds of crime either by himself or authorise any officer subordinate to him to effect such distribution.

(8) If there are no claimants to receive such proceeds or no claimant is ascertainable or there is any surplus after satisfying the claimants, such proceeds of crime shall stand forfeited to the Government.”

17 In *Kartik (Supra)* the Division Bench of Bombay High Court has considered the issue and held in paragraph 5 to 11 as under:

“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."

18 Considering the facts and circumstances of the case and concurring with the judgment passed by Bombay High Court in Kartik (Supra),

and also in view of provisions of Section 106 & 107 of BNSS, we are of the considered opinion that freezing of bank account and put on hold the amount of Rs.43,38,375/- cannot be made by the police authority particularly when the loss, if any, is not quantified.

19 Therefore, the impugned communication dated 13.04.2026 Annexure P/16 is hereby quashed and also the further communication dated 27.04.2026 holding the amount of Rs.43,38,375/- in the bank account of the petitioner bearing A/c No.9913203430 is also quashed. The investigating agency may however proceed in terms of Section 107 of BNSS, 2023 in accordance with law. It is expected that the prosecution agency shall conduct a fair and impartial investigation by an officer not below the rank of Deputy Superintendent of Police.

20 With the aforesaid observation, the writ petition is **allowed**.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Head Note

The Police Officer investigating a crime has to approach the 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. Attachment/hold under Section 107 of BNSS can be effected only upon orders of Magistrate.