



2026:DHC:1748



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1592/2026 and CM APPL. 7763/2026

Date of Decision: 26.02.2026

**IN THE MATTER OF:**

PAY 10 SERVICES PRIVATE LIMITED .....Petitioner

Through: Mr. Dayan Krishnan, Sr. Adv with Mr. Nakul Batra, Ms. Palak Sehgal, Ms. Aankhi Anwasha, Mr. Akshar Bhatt, Mr. Sukrit Seth, and Mr. Sreedhar Kale, Advocates.

versus

UNION OF INDIA AD ORS .....Respondents

Through: Mr. Ripudaman Bhardwaj, CGSC with Mr. Atul Tanwar, Advocate for R-1/IOI.  
Ms. Anushka Verma and Mr. Rajat Katyal, Advocate for R-3/Yes Bank. Mr. Ramji Srinivasan, Sr. Adv. with Mr. Vinodh Kanna B, Ms. Shefali Munde, Mr. Arjun Bhatia, Ms. Thilagavathi P, Advocates for R-4.

**CORAM:**  
**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**

**J U D G E M E N T**

**PURUSHAINDR KUMAR KAURAV, J. (ORAL)**



1. The Court is called upon to decide whether the instant writ petition, challenging action purportedly taken under Sections 94 and 106 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter ‘the BNSS’), and Section 69 of the Information Technology Act, 2000 (hereinafter the ‘IT Act’), would be amenable to be challenged in a Writ Petition (Civil) or a Writ Petition (Criminal).

2. Mr. Ramji Srinivasan, learned senior counsel appearing for respondent no.4-Tamil Nadu Police, while placing reliance on the decision of the Division Bench of the Kerala High Court in the case of *N. Prakash vs. Manoj Kumar and Ors.*<sup>1</sup>, argues that the writ petition should have been registered as ‘W.P. (Criminal)’ since the genesis of the entire dispute lies in a criminal investigation.

3. Mr. Dayan Krishnan, learned senior counsel who appears for the petitioner, contends otherwise. He submits that the petitioner, essentially, is seeking protection of civil rights which stand infringed on account of the debit-freeze on the petitioner’s account. According to him, the power to freeze bank accounts emanates from Section 107 of the BNSS and not from Section 106 of BNSS. According to him, Section 107 of the BNSS deals with the attachment and forfeiture and restoration of property, and is not a criminal/penal provision. He asserts that the powers of forfeiture under the said provision are essentially civil in nature. The regime under Section 107 of the BNSS may be compared to the regime of attachment, confiscation and restoration under Sections 5 and 8 of the Prevention of Money Laundering Act, 2002 (hereinafter ‘the PMLA’).

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<sup>1</sup> 2025 SCC OnLine Ker 1149



Reliance, in this regard, is placed on the decision of the Supreme Court in the case of *Vijay Madanlal Chaudhary vs. Union of India*.<sup>2</sup> It is submitted that the Court, in *Vijay Madanlal Chaudhary*, recognized that attachment is a civil proceedings. Reliance is also placed on the decision of the Supreme Court in the case of *Biswanath Bhattacharya vs. Union of India and Ors.*<sup>3</sup> to argue that non-conviction based civil forfeiture regime are not ‘penalties’ within the meaning of Article 20 of the Constitution of India. The decision in the case of *West Bengal vs. S. K. Ghosh*<sup>4</sup>, has also been pressed into service to argue that non conviction based forfeiture is not ‘penalty’ and is, in fact, a speedier procedure for recovery of money, which is civil in nature.

4. It is also submitted that this Court is consistently following the practice of entertaining writ petitions against unlawful freezing action in a civil writ petition. Reference is made to *Malabar Gold, Pawan Kumar Rai vs. Union of India and Another*,<sup>5</sup> and *Neelkanth Pharma Logistics (P) Ltd. v. Union of India*,<sup>6</sup>. The practice being followed by other High Courts to entertain writ petitions on civil side against similar actions has been pointed out. Decisions in the case of *Dr. Sajeer vs. Reserve Bank of India Represented by its Governor of RBI and Another*<sup>7</sup>, *Nazeer K.T. vs. Manager, Federal Bank and Others*<sup>8</sup>, *Mohammed Saifullah vs. Reserve Bank of India, Rep. by its*

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<sup>2</sup> 2023 12 SCC 1

<sup>3</sup> (2014) 4 SCC 392

<sup>4</sup> (1962) SCC OnLine SC 53

<sup>5</sup> 2024 SCC OnLine Del 8936

<sup>6</sup> 2025 SCC OnLine Del 1055

<sup>7</sup> 2023 SCC OnLine Ker 9087

<sup>8</sup> 2024 SCC OnLine Ker 4614



***Governor and Others<sup>9</sup>, Abdul Basith vs. Cyber, Economic & Narcotic Crime, rep by Station House Officer and Another<sup>10</sup>, Khalsa Medical Store Thru. Prop. Yashwant Singh vs. Reserve Bank Of India Thru. Governor And 3 Others.<sup>11</sup>***

5. It is also submitted that even the Standard Operating Procedure for NDRP-CFCRMS, Custody, restoration of money and Greivance Redressal dated 02.01.2026, issued by the Ministry of Home Affairs does not envisage any criminal proceeding but rather, purports to facilitate recovery and restoration of defrauded amounts to complainants in fair, transparent and proportionate manner.

6. It is, thus, his argument that the impugned action infringes the petitioner's fundamental right to carry on business under Article 19(1)(g) and the constitutional right to property under Article 300A of the Constitution of India. The petitioner, therefore, has preferred a civil writ petition.

7. I have considered the submissions made by learned senior counsel appearing for the parties and have perused the record.

8. During the course of arguments, various submissions have been made by Mr. Srinivasan on the merits of the case as well. However, this order is strictly confined to the issue of maintainability of writ petition on the civil side.

9. As per the prevailing roster of this Court dated 31.12.2025, there seem to be three broad jurisdictions; (i) Single Bench (Civil Jurisdiction), (ii) Single Bench (Criminal Jurisdiction), and Original Jurisdiction (Civil).

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<sup>9</sup> 2024 SCC OnLine Mad 5604

<sup>10</sup> 2025 SCC OnLine Ker 83

<sup>11</sup> order dated 19.01.2026 in (WRIT - C No. - 12211 of 2025) (Allahabad HC)



10. This Bench is assigned, *inter alia*, civil writ petitions miscellaneous, including those involving statutory authorities, DTC, Urban Arts Commission, Airport Authority of India etc. from year 2021 onwards. This Bench exercises civil jurisdiction as per the Roster. The Single Benches exercising criminal jurisdiction are also assigned writ petitions (criminal) of the year 2026.

11. Under these circumstances, the Court finds that writ petitions raising grievances related to fundamental rights of citizens and for enforcement of their other legal rights can be filed under Article 226 of the Constitution of India before this Court. As to which writ petition would fall within the criminal jurisdiction and would fall in civil jurisdiction; there does not seem to be any clear demarcated guidelines. The Court, therefore, as and when called upon will have to examine the facts and circumstances of each case and to rule as to whether the writ petition would lie as a civil or criminal.

12. This Court, whether in the civil jurisdiction or in the criminal jurisdiction would exercise the same inherent power vested under Articles 226 and 227 of the Constitution of India, and the said power is not circumscribed by any nomenclature. Neither the Supreme Court, nor this Court, in any of the cases relied upon by the parties, has laid down any conclusive line of demarcation between civil writ petitions and criminal writ petitions. In this regard, therefore, the Court has to consider the genesis of the dispute and the nature of the challenge which is laid by the petitioner.

13. In the present petition, the prayer is two-fold; the first prayer is for setting aside notices dated 23.01.2026 and 23/24.01.2026, issued by respondent



no. 4-Tamil Nadu Police; and the second prayer is for directing respondent no.3- Yes Bank to defreeze petitioner's Escrow account.

14. The impugned notice dated 23.01.2026 has been passed by the Police Department of Cyber Crime Police Station, Theni District, Maduari, Tamil Nadu. As is evident from the same, the impugned notice has been issued, purportedly, in exercise of powers under Sections 94 and 106 of the BNSS. The second notice dated 23.01.2026 refers to FIR No. 35/2025 registered at Theni Police Station and in pursuance thereto certain directions have been passed.

15. A perusal of the said provisions indicate that as per the statutory scheme, these provisions are invoked, primarily, for the purpose of investigation. Section 94 of the BNSS empowers Courts and officers in charge of police stations to summon any person who is believed to be in possession of any document containing digital evidence or other thing necessary for the purposes of investigation and produce such document. Section 106 of the BNSS empowers the police to seize property which is found under circumstances which create suspicion of the commission of any offence. It is therefore, clear, that the impugned action, as per respondent no. 4-Tamil Nadu Police, is for the purpose of its investigation into FIR No. 35/2025.

16. At this stage, paragraphs no. 8, 9, and 14 of the reply of respondent no.4 is extracted as under:

*"8. It is respectfully submitted that during the course of investigation and inter-agency coordination, the Petitioner's payment aggregation platform and escrow account maintained with Respondent No.3 were repeatedly flagged through NCRP alerts and cyber-fraud reports, necessitating immediate preventive action. Further, complaints received by the Respondent No. 4 alongwith NCRP*



*Acknowledgement number and the preliminary investigation conducted by the Respondent No. 4 revealed that the Bank Account No. 001677900000042 of the Petitioner maintained at Respondent No. 3 Bank is involved in defraud of funds.*

*9. Further, during the investigation of these cases, it is found that the money trails traced through the NCRP portal originated only from the date of the transactions complained. For example, if the complainant transferred funds on 28.11.2025, the money trail would begin only from that date onwards. Any routing of funds by the involved accounts either prior to or after the date of the transaction reported by the complainant such as transfers to escrow or merchant accounts, is not reflected in the NCRP portal. In such cases, the money trail must be traced manually by obtaining transaction statements from the concerned banks. Where a complaint involves multiple bank accounts, this process can take a considerable amount of time to identify those who are facilitating the routing of scam proceeds in a manner that appears legally compliant.*

*14. At the preliminary stage of investigation, immediate isolation of a precise disputed amount is often impracticable, as transaction-level reconciliation, victim mapping, and forensic analysis are required to identify the actual proceeds of crime. In such circumstances, a temporary protective lien is necessary and proportionate investigative safeguards are required to prevent diversion or laundering of suspected proceeds, preserve electronic and banking evidence and to protect the interests of a large number of victims.”*

17. The genesis of the entire dispute, therefore, lies in the ongoing criminal investigation. The petitioner may have a merit in its submissions and may succeed if it is able to satisfy the Court that the impugned action is not tenable in law. However, this aspect is not the subject matter of adjudication at present. Furthermore, as on date, the impugned action cannot be said to entail merely civil consequences; rather, it gives rise to both civil and criminal consequences.

18. The argument of the petitioner that respondent no. 4-Tamil Nadu Police has incorrectly invoked the provision under Section 106 of the BNSS instead of



Section 107 for taking the impugned action does not require to be considered, at this stage. The same will have to be considered by the Court which eventually will deal with the controversy on merits.

19. This Court is also persuaded to be guided by the principles enunciated by the Division of the Bombay High Court in the case of *M/s Nagpur Cable Operators' Association vs. Commissioner of Police, Nagpur*,<sup>12</sup> which was followed by the Division Bench of the High Court of Kerala in *N. Prakash*. The relevant portion of the decision in *M/s Nagpur Cable Operators' Association* is extracted below, for reference:

*“21. In the light of the aforesaid legal position explaining the nature of proceedings under Article 226 of the Constitution, and the classification whether the said proceeding is civil or criminal, when the provisions of the Appellate Side Rules are looked into, it would be found that all applications under Article 227 of the Constitution challenging the orders and decisions of the Courts constituted under the Criminal Procedure Code are dealt with on the side of criminal business of the Appellate Side of this Court, but the said clause (i) of Part II, Criminal of Rule 2 of Chapter I is not all exhaustive. Rule 2B of Chapter I, as observed above, states that all petitions/applications under Article 226/227 of the Constitution arising out of or relating to the order of penalty or confiscation or an order in the nature thereof or an order otherwise of penal character and passed under any Special Statute shall be heard and decided by the Division Bench hearing writ petitions. This rule only allocates that the class of petitions/applications under Articles 226 and/or 227 of the Constitution of India mentioned in Rule 2-B shall be decided by the Division Bench hearing writ petitions, but does not classify the nature of proceedings whether the said writ petition/application shall be criminal or civil writ petition. Applying the tests laid down by the Apex Court in Narayan Row's case (supra), we are of the view that if the writ petition/application under Articles 226 and/or 227 of the Constitution arises out of or relates to a proceeding in which, if carried to its conclusion ultimately it may result in sentence of death or by way of*

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<sup>12</sup> AIR 1996 Bom 180.



*imprisonment, fine or forfeiture of the property then such writ petition/application under Article 226 of the Constitution of India and/or under Article 227 of the Constitution, should be treated as a “criminal writ petition” and styled as such. For hearing and decision of such petition, it should be listed before the Division Bench allocated such business by Hon’ble the Chief Justice or if it pertains to the single Judge jurisdiction, before the Bench assigned such work. As regards petitions/applications under Article 226 of the Constitution seeking writs or orders in the nature of habeas corpus, Rule 1 of Chapter XXVIII of Appellate Side Rules, also provides only allocation of such writ petitions to the Division Bench taking criminal business of the Appellate Side of the High Court. Obviously, since the petitions/applications under Article 226 of the Constitution of India for issuance of writs of habeas corpus arise out of the unlawful detention, in its very nature, such petitions too should be styled as criminal writ petitions. Criminal writ petitions would also cover those writ petitions which arise out of the orders and the matters relating to prevention or breach of peace or maintenance of peace and order or such orders aimed at preventing vagrancy contemplated to be passed. ‘Criminal writ petition’ shall also take in its embrace the petitions/applications under Article 226 or 227 of the Constitution of India if it arises out of or relates to investigation, enquiry or trial of the offences either under special or general statute. When a statute commands or prohibits an act, disobedience of such statute is prima facie criminal unless criminal proceedings are excluded by such statute and the petitions/applications under Articles 226 and 227 of the Constitution of India in connection thereto or arising therefrom would be criminal proceeding and should be styled as ‘Criminal Writ Petition’. However, such cases are to be distinguished from the cases where an act may be prohibited or commanded by the statute in such a manner that the person contravening the provision is liable to pecuniary penalty and such recovery is to be made a civil debt. In such type of cases the contravention would not be a crime and, therefore, petitions/applications under Articles 226 and 227 of the Constitution of India arising therefrom would not be criminal proceeding.”*

*(Emphasis supplied)*

20. Having noted that aforesaid distinction, it emerges that instant is not a case of administrative directions *simplicitor* directing the freezing of the petitioner’s account, but rather, emanates from the ongoing criminal



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investigation. The registration of FIR No. 35/2025, the invocation of Section 106 of the BNSS, and the fact that the position maintained by respondent no. 4-Tamil Nadu Police in aforementioned paragraphs no. 8, 9, and 14 of the counter-affidavit, all indicate that the action being impugned herein, has been taken, whether correctly or incorrectly, in pursuance of criminal investigation under the BNSS. It is for the petitioner to establish that the impugned action, in fact, could not have been taken under Section 106 of the BNSS and Section 107 ought to have been invoked before the jurisdictional Court. The Court would be fully empowered to deal with all issues. Preponderantly, the dispute lies in the criminal domain, and the determinative factor for listing of matters, whether on the criminal or civil side would be the predominant nature of the *lis* and not any ancillary or incidental effects that may ensue in the course of the criminal proceedings in issue.

21. Nothing stated above would have any bearing on the merits of the case. All rights and contentions of the parties are left open. However, the Court directs that the petition be registered as Writ Petition (Criminal) and subject to the approval of Hon'ble the Chief Justice, be listed before the appropriate Bench.

**PURUSHAINDR KUMAR KAURAV, J**

**FEBRUARY 26, 2026**

aks/amg.