

ORDER BELOW EXH. 1 IN CRI.M.A. No.6126/2024

1. Perused the application filed by applicant Ashok Bansilal Patel under Section 503 of the Bharatiya Nyaya Sanhita, 2023 for interim custody of seized gold ornaments, namely (i) one gold flat chain weighing about 9 grams worth ₹68,000/- and (ii) one Ganpati photo pendant weighing about 1 gram worth ₹4,000/-, seized in Crime No. 695/2024.
2. It is the case of the applicant that he is a jeweller by profession, running a shop under the name “Bhagyalaxmi Jewellers.” On 22/11/2024, an unknown person visited his shop for purchase of a gold chain, took a trial of the chain with pendant, and absconded on his motorcycle without payment. The applicant lodged a complaint with the police. During investigation, the accused was traced, and certain gold ornaments were seized, which the applicant claims to be his property. Hence, the present application for interim custody.
3. The Investigating Officer admitted the seizure of a 7.620 gram gold chain worth ₹68,000/- and a 0.520 gram pendant worth ₹4,000/- in the said crime. He expressed no objection for handing over the same to the applicant.
4. However, the Learned A.P.P. objected to the application on the ground that there exists a discrepancy in the weight of the ornaments stated by the applicant (9.650 grams) and that actually seized by the police (8.140 grams). It is further contended that if the ornaments are handed over, there is every possibility of alteration or disposal, which may prejudice the prosecution.
5. The intervenor Manappuram Finance Ltd. filed an intervention application through its authorised representative Aniket Hanmant Gholap contending that the accused Kapil Jayaram Chavan pledged the stolen gold ornaments with their branch. Pursuant to a notice under Section 94 of BNSS, the police seized ornaments weighing 22.9 grams from the intervenor’s branch.
6. It is further contended that the seized ornaments include one flat gold chain weighing 7.620 grams and one Ganpati pendant weighing 0.520 gram, matching the description in the seizure panchnama, and therefore, interim custody be given to them as bona fide pawnee and not to the applicant.
7. Section 503 of BNSS, 2023 (corresponding to Section 451 of Cr.P.C.) empowers the Court to pass suitable orders regarding interim custody of property produced during inquiry or trial. However, such custody can be

granted only to the person who prima facie establishes ownership or lawful possession over the property.

8. In the present case, both rival claimants are asserting contradictory ownership rights over the same seized ornaments. The applicant relies upon a purchase receipt showing 9.650 grams of gold. However, the seized ornaments weigh only 8.140 grams. The difference in weight, though not very large, is material when genuineness and identity of the property are in dispute. The applicant has not produced any distinctive identification, hallmark certificate, photograph, or invoice number matching with the seized ornaments. Hence, his ownership over the particular ornaments seized remains doubtful at this stage.

9. The intervenor, on the other hand, claims possession as a pawnee, having accepted the gold in pledge from the accused. However, the pledge itself appears to be the consequence of the alleged theft and cannot create any superior right in favour of the intervenor over the true owner. The intervenor's possession thus flows from the accused, and such derivative possession cannot be protected when the ownership itself is disputed.

10. Moreover, the description of seized property, as per panchnama, shows some mismatch in the total weight and design details between the versions of the applicant and the intervenor. Thus, at this stage, it is not possible to ascertain conclusively to whom the seized ornaments belong.

11. The ornaments constitute material evidence in the pending criminal case, and premature release to any of the claimants may cause prejudice to the fair trial and possibility of alteration or disposal cannot be ruled out. Hence, it is desirable that the property be retained in police custody till the ownership is established during trial.

12. Reliance is placed on the principle laid down in *Sunderbhai Ambalal Desai v. State of Gujarat*, (2002) 10 SCC 283, wherein the Hon'ble Supreme Court observed that custody may be given only when ownership is prima facie clear. In cases of dispute, the property should remain under safe custody till proper adjudication. As a result I pass following order:

ORDER

1. The application and intervention application is rejected.
2. The seized gold ornaments (one flat gold chain weighing 7.620 grams and one Ganpati pendant weighing 0.520 gram) shall remain in the safe custody of the police station concerned, till conclusion

of trial or further orders of this Court.

3. The Police Station In-Charge shall ensure proper preservation of the property and shall not release or dispose of the same without prior permission of this Court.
4. Issue copy of this order to the I.O. for information and compliance.

(Dictated and pronounced in the open Court.)

Date :- 27/11/2025

Place :- Pune

(Alamodi.U.S.M)
Judicial Magistrate, First Class,
(AC Court) Pune.