

**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.
AT: HOLALKERE.**

PRESENT: Sri. Saravanan .S.,
B.B.M., LL.B.,
Senior Civil Judge and JMFC,
Holalkere.

Criminal Case No.954/2022

Dated: 17th January 2023.

The State by Holalkere P.S.,
(By Learned A.P.P.)

....Complainant

-Versus-

Sachin and Another

....Accused

Ganesh S/o Rangappa Nayaka,
Aged about 25 years, Agriculturist,
Owner of the Seized Golden
Ornaments,
R/o Gowdihalli Village,
Ramagiri Hobli,
Holalkere Taluk,
Chitradurga District.

(By Sri. D.J., Advocate)

....Applicant

Order on application U/Sec.457 of Cr.P.C.

That, the applicant has registered the complainant before the Holalkere Police on 26-08-2021, in Cri.No.272/2021 for the alleged offences punishable U/Sec.457 and 380 of IPC, and Holalkere Police have arrested the accused in Cri.No.272/2021 in respect of alleged theft committed in the house on 25-08-2021 at Gowdihalli Village of Holalkere Police Limits and they have seized the golden ornaments under PF No.139/2022 dtd:08-08-2022.

2. The applicant has filed this application U/Sec.457 of Cr.P.C. seeking release of the Golden Ornaments i.e., item No.1 two lane of golden chain weighting about 34.76 grams and item No.2 one pair ear golden ole (Bendole) weighting about 5.80 grams belongs to applicant.

3. It is stated that, the said golden ornaments are in the custody of Holalkere police, he claims that his mother is the owner of the seized golden ornaments, which are required for his mother for daily use and wearing is compulsory as per their customs. Based on the complaint of Ganesh S/o Late Rangappanayaka, with respect to the golden ornaments stolen by the accused from his house situated at Gowdihally Village at Holalkere Taluk. It is further stated that, the above seized golden ornaments are kept in the custody of police station without use, then it will lose its value. It is further submitted that he is ready and willing to offer proper surety to the satisfaction of the Court and ready to abide by any conditions imposed by this Court. Hence, prays to allow this application.

4. On the other hand, the prosecution has filed objection opposing the application and prayed not to release the golden ornaments for the interim custody of the applicant. If it is release, it is difficult to secure the golden ornaments during the trial. It is also contended that the applicant may change the nature of the golden ornaments. Hence, prayed to dismiss the application.

5. Per contra, the IO/CPI Holalkere has given consent for the release of those properties as the applicant stated to be the owner as per the complaint lodged by him.

6. Having heard on both the side.

7. The following points will arise for my consideration:

1. Whether the application filed by the applicant U/Sec.451 of Cr.P.C. is deserves to be allowed?

2. What Order?

8. My answers to the above points are:

Point No.1 : In the Affirmative

Point No.2 : As per final order
for the following:

REASONS

9. **Point No.1:** The PSI of Holalkere P.S. filed FIR for the offence punishable U/Sec.457 and 380 of IPC. The above golden ornaments have been seized by conducting mahazar and they are

mentioned in P.F. No.139/2022 dated 08-08-2022. After filing of charge-sheet, this Court had taken the cognizance of offence punishable U/Sec.457 and 380 of IPC. Therefore, the golden ornaments are required in the present case only for the purpose of identifying them during the trial.

10. The applicant counsel submits, that he is to furnish suitable surety and ready to abide the conditions imposed by this Court. It is further stated that, the applicant's mother is the absolute owner of the said things. In view of the submissions made by the applicant and also on perusal of the police papers, it appears that the present applicant is the complainant residing at Gowdihally village, as he gave the complaint by mentioning its stolen descriptions with regard to the stolen golden ornaments for that he has produced his xerox copy of Aadhar Card. There is also mentioned about the identity of the golden ornaments and cash in all worth about Rs.1,45,000/- properties are stolen by committing lurking house tress pass and committed theft.

11. That in view of the complaint averments it reveals the applicant is the complainant and there is no other rival claimants to deny the claim, the owner of the said seized things at that time and moreover the applicant has produced his xerox copy of Aadhar Card as to his identity, but the FIR and complaint and also the report of IO, which makes it clear as of now, that there is no impediment to pass an order for the interim custody in respect of the properties which are claimed by the applicant.

12. The article No.1 and 2 belongs to the mother of applicant of the properties and I.O. has filed report that the said golden ornaments are not required for further investigation. Therefore, it appears that the applicant is entitled to the interim custody so by imposing suitable conditions, if the said properties are mentioned in the above said P.F. are released for the interim custody of the applicant, there will be no prejudice will be caused to the prosecution. Therefore, in order to set-right the apprehension of the prosecution if imposing suitable condition it is just and suffice for the release of the interim custody of the above said properties to the applicant.

13. At this stage, it is to clarify that the item No.1 and 2 are the properties required in this present case which is pending before this Court, along with other items required in Cr.No.272/2021 on the file of learned Prl. Civil Judge & JMFC., Holalkere, but it is shown in the single PF No.139/2022, as such, in order to avoid the possible inconvenience that may cause to such Court in the trial, suitable conditions has to be imposed to enable the Court to secure the properties if required at appropriate stage, and hence, for the above reason the above **point is answered in the Affirmative.**

14 **Point No.2:** In view of the above findings, I proceed to pass the following:

: ORDER :

The application filed by the applicant by name Ganesh S/o Rangappa Nayaka, 25 years, U/Sec.457 of Cr.P.C. is hereby allowed.

The seized golden ornaments i.e., Article No.1 and 2 properties as mentioned in P.F. No.139/2022 dated 08-08-2022 of Holalkere P.S. is released to the interim custody of the applicant on the following conditions:

1. The applicant shall execute an Indemnity Bond for Rs.2,00,000/- with a surety for like sum.
2. The applicant shall not change the structure and nature of the said things.
3. The applicant shall not alienate the said things in any manner to anyone till the disposal of this case or till further orders.
4. The applicant shall produce the said articles before this Court or before the I.O. whenever called upon to do so.
5. The applicant shall returned the above things if rival claimants claiming the custody of the said things.
6. I.O. is hereby directed to take the photographs of the said things at the expenses of the applicant and produce the photographs with negatives before the Court after conducting mahazar.

(Dictated to the Stenographer directly on the computer, typed by him corrected by me and then pronounced in the Open Court on 17th day of January 2023.)

(Sri. Saravanan .S.)
Senior Civil Judge & JMFC,
Holalkere.