

ORDER ON APPLICATION U/S.457 OF CR.P.C.

The applicant-Sri. Basavaraju.K.N. S/o. Nagaraja has filed this application seeking interim custody of peeled arecanut weighing 13 K.G. seized under PF.No.12/2023 and 40 K.G. seized under PF.No.13/2023 dated 19.01.2023.

2. He has stated that he is the owner of the above said arecanut. He has grown the said arecanut seeds in his land. There is no claimants except this claimant for the release of the said arecanut. If the arecanut kept in the open space it will be destroyed. He is ready to furnish surety and abide by the conditions that may be imposed by this Court.

3. The learned APP has filed objections contending that the Ajjampura PS have registered a case against the accused for the offences punishable U/s.379 of IPC. The applicant is not lawful owner of the seized arecanut. If the arecanut is handed over to the applicant, there is every likelihood of the applicant changing its nature, selling it and taking it outside the jurisdiction of this Court. The said arecanut is required for the purpose of identification during the trial. Accordingly, prayed for rejection of the application. I.O. has filed his objections contending that the seized arecanut is to be released in favour of the applicant with conditions.

4. Heard both the sides.

5. Perused the application, objections, PF and other materials available on record.

6. The applicant is claiming interim custody of the above said arecanut being its owner. As could be seen from the FIR, the applicant is the complainant in this case. Except the applicant no one has filed any application seeking release of said arecanut. The

applicant has relied upon the decision of the Hon'ble Apex Court reported in AIR 2003 SC 638 between Sundarbai Ambalal Desai Vs. State of Gujarat during his arguments. Though the learned APP has taken several objections, I am of the opinion that the apprehension of the prosecution can be met with by imposing suitable conditions. Moreover, if the arecanut is kept in the custody of the police, no purpose would be served. In view of the ratio laid down in the above said decision and in the circumstances of the case, I am of the opinion that the applicant is entitled for the interim custody of the above said arecanut. Hence, I pass the following;

ORDER

The application filed by the applicant by name Sri. Basavaraju.K.N. U/Sec.457 of Cr.PC is hereby allowed.

The applicant is entitled to the interim custody of the peeled arecanut weighing 13 K.G. seized under PF.No.12/2023 and 40 K.G. seized under PF.No.13/2023 dated 19.01.2023 on his execution of Indemnity Bond for a sum of Rs.22,000/- with one surety for like sum, subject to following:

: CONDITIONS :

1. The applicant shall not make any alteration of the above said arecanut in any manner i.e. colour, shape etc.
2. The applicant shall not alienate the above said arecanut in favour of anybody, in any manner till completion of the trial.
3. The applicant shall produce the above said arecanut before the I.O. and the Court as and when directed him to do so.

4. The I.O. is hereby directed to release the above said arecanut to the interim custody of the applicant on his proper identification by drawing a detailed mahazar and taking the photographs of the above said arecanut in all the angles suitable for its identification during trial and submit the same to this court.

Sd/-

Civil Judge & Addl. JMFC.
Tarikere

In compliance of order dated 13.02.2023. Surety by name Sri. D.G. Gurumurthy @ Gurumurthy S/o. Late. Sri. Gangadharappa, Aged about 60 years, agriculturist R/o Danayakapura village, Shivani Hobli, Ajjampura Taluk is present. He has filed his surety affidavit for applicant along with certified copy of Aadhaar card and RTC extract pertaining to Sy.No.16/6 measuring 5.08 guntas situated at Makanahalli village, Shivani Hobli, Ajjampura Taluk. He submits that he is ready to stand as surety for the release of the above said arecanut in favour of the applicant. Perused, satisfied and accepted.

Office is directed to collect indemnity bond and surety bond of the applicant and the surety accordingly.

Issue release intimation to the I.O. to release the above said arecanut in favour of the applicant on his proper identification by drawing a mahazar and taking a photographs of the same in all the angles suitable for its identification and submit the same to the Court forthwith.

Civil Judge & Addl. JMFC.
Tarikere.