

**IN THE COURT OF THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE AT MYSURU**

Dated this, the 10th day of September 2020

Present: **Sri. RAMACHANDRA D.HUDDAR**, B.Com., LL.M,
Prl.District & Sessions Judge,
Mysuru.

S.C.NO.137/2020

Complainant : Lakshmipuram Police

(By **Public Prosecutor**)

//Vs//

Accused : Rehman Shariff
S/o Gouse Shariff,
Aged about 28 years,
Residing at No.166, 1st Cross,
Aleem Nagar, Bannimantap Extension,
Mysuru.

Applicant : Pushpa R.
W/o. N.G.Srihari,
Aged about 59 years,
#1079, Railway Station Road,
Opp. Manuvana Park,
Chamarajapuram,
Lakshmipuram,
Mysuru - 570 004.

(By Sri.K.S.Andani., **Advocate**)

:: O R D E R ::

Applicant by name Pushpa R. W/o N.G.Srihari has filed an application under Section 457 of Cr.P.C. to release seven Gold

Bangles seized in this case reported before the court under P.F.No.49/2019 of Lakshmipuram Police Station (P.R.No.72/2020).

2. It is stated by the applicant that, she is the legal representative of deceased Nagarathna. She is also a complainant in this case. The police after investigation, have filed charge sheet against accused persons. According to her, she is the owner of seven gold bangles totally weighing 100 grams. She purchased the same from Joyalukkas and Bhima shops. She gave the said seven bangles to her mother Nagarathna during her lifetime. It is stated that, police during the investigation, have seized the said seven bangles under the aforesaid P.F.No.49/2019 which is now assigned with P.R.No.72/2020 before this court. She has produced the copies of the receipts for having purchase of the same.

It is stated that, she undertakes to abide the conditions to be imposed by the court. She will produce the same as and when required for the purpose of identification and also undertakes to furnish solvent surety to the satisfaction of the court. Hence, it is prayed by the applicant to allow the application.

3. Copy of this application is served upon the Public Prosecutor. The learned Public Prosecutor resisted this application by filing detailed objection statement, stating that, police after investigation have filed the charge sheet against the accused persons for the offences punishable under Sections 392, 450, 302 of I.P.C. It is alleged in the complaint that, the accused so

mentioned in the charge sheet by committing criminal trespass into the house of deceased Nagarathna, by putting clothes in her mouth has taken away seven bangles weighing 100 grams. Police have investigated and seized the said seven bangles reported to the court under P.F.No.49/2019. The said bangles are very much required for the purpose of identification in this case. If they are given interim custody to the applicant, she may alienate or change the nature, colour etc. Therefore, it is prayed by the prosecution to dismiss the application.

4. Heard the arguments. Perused the records.
5. The points that would arise for my consideration are as under:

1. Whether applicant has made out justifiable and acceptable grounds to grant an order of interim custody of seven gold bangles seized under P.F.No.49/2019 assigned with P.R.No.72/2020 as prayed for?

2. What Order?

6. My answer to the above points are as under:

Point No.1: In the **affirmative**

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

: R E A S O N S :

7. **POINT NO.1:** It is an admitted fact between both the sides that, accused have been charge sheeted for the offences

punishable under Sections 392, 302 of I.P.C. Under letter dated 24.08.2019 submitted by the Investigating Officer, it is stated that, there is an allegation made by the complainant that, when the mother of the complainant was brushing her teeth, some unknown person came from behind and filled clothes in her mouth and snatched seven gold bangles from the said deceased Nagarathna. Subsequently, she died in the hospital as per the records being produced by the prosecution. Therefore, initial registration of crime was under Section 392 I.P.C. Now, police have filed charge sheet against the accused for the aforesaid offences.

8. During the course of investigation, the Investigating Officer has seized the purchased invoices to show that, the gold bangles have been purchased. Even, along with the application, the applicant also has produced the photo copy of the receipts for having purchased the said gold bangles weighing 100 grams. These documents are not disputed by the prosecution.
9. Under the provisions of Section 457 of Cr.P.C. which speaks of release of article seized by the police and this section applies to the situation and the court has ample jurisdiction to return the articles. On reading the provisions of Section 457 Cr.P.C., there is no provision enabling the return of the property. To consider such application, we have to read the provisions of Section 451, 452 and 457 of Cr.P.C. They read as under:

Section 451 Cr.P.C.

When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation - For the purposes of this section, "property" includes-

(a) property of any kind or document which is produced before the Court or which is in its custody,

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

Section 452 Cr.P.C.

(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore

such property to the Court, if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in Sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

Section 457 Cr.P.C.

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the Provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

10. Thus, Section 451 of Cr.P.C. empowers the court to pass appropriate orders for the custody of the property produced during the inquiry or trial and in the event of speedy decay, the court may direct the sale of the property. The application can be made under Section 451 during the pendency of inquiry or trial on production of property in the court. Here, already P.F.No.49/2019 is submitted to the court reporting seizure. They are produced before the court and assigned with P.R.No.72/2020. Section 452 of Cr.P.C. confers powers on the court to direct the disposal of the property on conclusion of trial or inquiry. Therefore, Section 451 of Cr.P.C. can be invoked during the pendency of inquiry or trial and Section 452 can be pressed into service after the termination of inquiry and trial and power can be exercised under both the provisions when the property is in the custody of the court or produced before the court. The directions can be given after commencement of trial or inquiry. Obviously, in this case either Section 451 of Cr.P.C. or 452 of Cr.P.C. does not apply as the inquiry or trial did not commence and the case is still pending before the court. Therefore, Section 457 of Cr.P.C. has been invoked by the applicant. This Section

comprises three stages. That is, the initial step is report by a Police Officer to the Magistrate regarding seizure of the property and the next event is non-production of such property during inquiry or trial and in the situation, the Magistrate is empowered to give suitable directions regarding disposal or delivery of the property.

11. Chapter-34 of Cr.P.C. deals with disposal of property. There is a trichotomy in the sense that, where the property has been seized by the police, but not produced before the court, the power to dispose it of is covered by Section 457 of Cr.P.C. Where property has been seized and otherwise produced before the court, the manner to dispose of the property is governed by Section 451 of Cr.P.C.
12. This is a case where the property is produced before the court now. So, in catena of judgments of Hon'ble Supreme Court of India and Hon'ble High Court of Karnataka, have held that, a production before the court does not mean physical custody or possession of by court. But, includes even control exercised by the court by passing an order regarding custody of the articles. Here, in this case, 7 bangles have been seized from the possession of the accused. The seizure is reported and they are produced before the court. Now applicant has produced documents to show that, those bangles were with the deceased and accused snatched away the same by committing dacoity on her person. Evidence is yet to be commenced in this case. Evidently, in this case, the ownership of the said bangles by the applicant is not

disputed by the prosecution. Even, during the course of investigation, similar receipts have been seized by the Investigating Officer. They are of gold bangles. According to the applicant, she undertakes to abide by the conditions to be imposed by the court and produced them before the court whenever directed. If that is so, as the said gold ornaments are required by the applicant being a lady, if conditions are imposed, it will safeguard the interest of the prosecution also. No serious objections have been raised by the prosecution to this application. In view of the law laid down by the Hon'ble Supreme Court of India and Hon'ble High Court of Karnataka, regarding grant of interim custody, if the application is allowed with conditions, it would meet the ends of justice. More so, the applicant is none other than the complainant in this case and has alleged about the commission of the dacoity on the deceased Nagarathna being her mother. Therefore, the application so filed by the applicant deserves to be allowed, but subject to conditions. Accordingly, I record my findings on **point No.1** in the **affirmative**.

13. **POINT NO.2:** Resultantly, I pass the following:

ORDER

Application filed by the applicant Pushpa
R. W/o N.G.Srihari is allowed.

Seven Bangles seized under
P.F.No.49/2019 assigned with P.R.No.72/2020 are

ordered to be released in favour of the applicant on her executing personal and indemnity bond for Rs.6,00,000/- (Rupees six lakhs only), with two sureties like-sum, subject to following conditions:

1. Applicant shall not alienate or dispose of the said seven bangles till disposal of this case;
2. She shall not change the colour, nature, complexion of the said bangles in any manner, till disposal of this case.
3. She shall produce the said seven bangles before the court whenever directed for the purpose of identification.
4. She shall furnish individual and collective photographs of said seven bangles.

Breach of any of these conditions would entail forfeiture of indemnity bond.

(Dictated to the Stenographer, transcribed by her on Computer, revised, corrected and then pronounced by me in open court on this day, the **10th day of September 2020**)

(RAMACHANDRA D. HUDDAR)
Prl. District & Sessions Judge,
Mysuru.

*JK