

Common Order below Exh. Nos. 57 and 59

- 1) These applications are filed by accused Nos. 3 and 4 under Sec.451 of the Code of Criminal Procedure, 1973.
- 2) According to the applicant/accused No.3, the Faujdar Chawadi, Police Station, Solapur has seized golden ornaments from his custody which is described in Para No. 3 of Exh. 59 i.e. (A- Golden ornaments of 1578.02 gram from Sr. No. 1 to 78 and B- Cash amount of Rs.35,11,400/- from Sr. No. 1 to 4) and according to applicant/accused No.4 Faujdar Chawadi, Police Station, Solapur has seized golden ornaments from the custody of accused No.3 custody which is described in Para No. 3 of Exh. 57 (i.e. Golden ornaments of 292.4 gram from Sr. No. 1 to 10) in connection with C.R.No.585/2023 registered for the offences punishable under Section 408, 465, 467, 468, 471, 477(A), 420 and 120(B) of the Indian Penal Code, 1860. They have filed present applications for the interim custody of the aforesaid seized articles.
- 3) In support of the application, they have filed affidavit of Simta Yatiraj Bihani vide Exh.73 along with photographs, wherein she stated that, gold mentioned in the application Vide Exh.59 through Sr. Nos. 3, 4, 10, 28, 49, 61, 64, 72, 73 and 75 in Para No.03 is her *Streedhan*. She has no objection to handover the said gold items to accused No.4. She has filed income tax returns, xerox copy of handwritten bill of the said gold. On its perusal, nowhere it appears that, she is the owner of the item mentioned by her as *Streedhan* and has also not justified the reason for handing over the said gold ornaments to accused No.04.

4) They have also filed affidavit of Amit Shivdas Patel vide Exh.74 along with photographs, wherein he stated that, gold mentioned in the application vide Exh.59 through Sr. No. 22 to 26 and 30 in Para No.03 is his gold. He kept it in the house of accused No.04 for the security purpose and has no objection to hand over the said gold to accused No.04.

5) They have also filed affidavit of Ashwini Yatiraj Bihani along with photographs vide Exh.75, wherein she stated that, gold mentioned in application vide Exh. 57 through Sr. Nos. 1 to 10 in Para No.03 is her *Streedhan*. She filed photo copy of the income tax returns and handwritten bill of gold. The said muddemal is seized from the custody of the accused No.03. Therefore, she requested to handover the said gold and alleged cash of Rs.35,11,400/- to her.

6) They have also filed affidavit of Suman @ Sumati Lakshman Gire along with photographs vide Exh.76, wherein he stated that, gold mentioned in application vide Exh. 59 through Sr. Nos.8, 16 to 21, 52, 54, 65, 76, 78 is her *Streedhan* gifted to her in marriage and has no objection to hand over the said gold to accused No.04.

7) They have also filed affidavit of Premlata Yatiraj Bihani along with photographs vide Exh.77, wherein he stated that, gold mentioned in application vide Exh. 59 through Sr. Nos. 1, 02, 13 to 15, 29, 35 to 40, 44, 45, 47, 48, 58, 59, 66 to 68, 74 to 77 is her *Streedhan* gifted by her parents and husband. She is doing money lending business and from that has income of Rs.25,00,000/-. She has collected the said amount for the marriage of her daughter. She has no objection to hand over the said muddemal to accused No.04.

8) In order to support their contention they relied upon the ratio laid down in *Dakhini Prasad Srivastava vs. State of U.P. Cri. Revn. No.1352 of 1977* wherein, the Hon'ble Allahabad High Court has opined that, "it is not the duty of the courts hearing criminal cases to enquire into and give a finding with regard to the ownership of the property seized by police for disposing of under Sec.457 of the Cr.P.C. where there is no investigation on a complaint or prosecution the normal rule to be followed is to hand it over to the person from whose possession it was obtained or who should be deemed to be in possession of it. Where there were grave doubts about the claim of person in whose name the car seized by the police remained registered and he had not preferred any complaint in that regard and there was no investigation or prosecution by the police held that, it was proper to hand it over to the person from whose possession it was seized.

9) On perusal of the citation referred by the Ld. Counsel of accused, it appears that, the muddemal mentioned in the citation is totally different from the muddemal in present application. The present application is under Sec.451 of the Cr.P.C. however, the Hon'ble High Court opined about Sec.457 of Cr.P.C. Therefore, with due respect the cited case law is not applicable to present case.

10) Perused application, documents filed in support of it, say thereon filed by learned A.P.P. Heard learned advocate for the applicant and learned A.P.P. on behalf of the State.

11) Ld.A.P.P. has contended that, accused Nos.1 to 4 have committed fraud by making false gold loan transactions and as per the Memorandum panchmana dated 12/10/2023 the said ornaments were seized from the custody of accused No.3. Therefore, she prayed to

necessary order may pass.

11) The original Complainant has also filed say Vide Exh.64 and written notes of argument vide Exh.71. According to him alleged muddemal is seized from the custody of the accused. Accused Nos.1 to 4 have committed fraud of Rs.3,28,12,892/- by making 83 false gold loan transactions including 5kg and 974 gram gold. Out of that, the investigation officer has seized Rs.35,11,400/- from the house of accused No.3 on 08/10/2023 by executing house seizure panchnama where the accused admitted that, alleged amount is of the complainant. On 09/10/2023 the police have seized gold up to 292.4 grams from the locker of accused No.4 by executing seizure panchnama. On 12/10/2023 memorandum punchanama of accused No.3 was recorded and thereby accused No.3 admitted that, 1578.02 grams gold were kept by him in the rice container situated at Balaji Traders, Shri Ram Apartment, out of total alleged gold of the complainant. Furthermore, accused No.3 and 4 are not the owner of alleged muddemal. Therefore prayed for rejection of the application.

11) Perusal of record, it reveals that, on 28/09/2023 the applicant has filed F.I.R. at Faujdar Chawadi Police Station for the offences punishable under Section 408, 465, 467, 468, 471, 477(A), 420 and 120(B) of the Indian Penal Code. Accordingly, during the course of investigation, the investigating officer has seized above mentioned golden articles and cash. The complainant has also filed application under Sec.457 of the Cr.P.C. for claiming the said muddemal. The said application vide Cri. M. A. No. 1572 was partly allowed.

12) It is further submitted by the applicants that, they are ready to abide by all conditions imposed by this Court. However, no one has submitted the original receipts of the alleged muddemal. The description given by the accused about the alleged muddemal is not as per the seized muddemal. Per contra the application of complainant vide Cri.M.A.No. 1572/2023 is partly allowed on the basis of verification of loan transaction documents. Moreover, the case Law cited by the Ld. Counsel by accused, it is not applicable in the present matter as muddemal returned in the said case was car and in the present case it is gold. Under such circumstances, it can be seen that only filing of photographs and rough receipts is not sufficient to decide ownership. Therefore it is necessary to handover the said muddemal to rightful claimant.

13) It is to be noted that, the police already filed chargesheet against the accused. The seized property is material piece of evidence. Whether the seized property is required for the evidence or not cannot be considered in this application. Therefore, the present application needs to be rejected. In the result, following order is passed:

ORDER

The applications vide Exh.57 and 59 are rejected.

Date:- 28/06/2024

(Dr. Ragini K. Jangam)
Judicial Magistrate, First Class,
(Court No.9), Solapur.