

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

This claim petition is filed by the applicant by name Smt.Thayamma, W/o Late Narayanashetty, aged about 48 years, R/at Kethupura Village, Sosale Hobli, T.Narasipura Taluk, Mysuru District seeking interim custody of 1 to 9 items properties i.e.,P.F.No.254/2021 Item No.1. 34.700ml 2 line golden chain, PF.No.253/2021 item No.1) 10 gms golden bracelet, 2) 4 gms 500 ml golden ear hangings 3) 2gms one ring, P.F.No.255/2021 2gms 700 ml one pair fancy studs(ear ornament), P.F.No.256/2021 item No.1) Artificial gold Long chain, 2) Rold gold Necklace, 3) Artificial gold waist belt 4) Artificial gold Head Mati which are seized by Bannuru Police in Cr.No.249/2018 and subjected in PF No.253/2021, 254/2021, 255/2021 and 256/2021.

2. It is contended in the application that the Bannuru Police have seized the properties in the above case from the accused persons and subjected the same in P.F.No. 253/2021, 254/2021, 255/2021 and 256/2021. It is further contended that the said gold items are required for own use of her family, if the ornaments are kept in police custody they loose shining and weight and she is ready to abide by any conditions that may be imposed and ready to furnish surety to the satisfaction of this Court.

3. It is contended in the objections by the learned APP that if the properties are released in favour of the applicant there are possibilities that the said gold items may be alienated, change the nature and shape of the ornaments, destroy the evidence and it is necessary to identify the gold items during the trial of the case. In such situation there are possibilities that the applicant might not

produce the gold and artificial gold items before the court when it is required.

4. The following points arise for my consideration:

1. Whether the applicant is entitled for interim custody of seized 9 items properties in question?

2. What order?

5. I have heard the arguments. Perused the entire materials available on record.

6. My findings on the above points are as under:

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

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

REASONS

7. **POINT No. 1** :-

It is pertinent to note that, from a careful scrutiny of the material on record, the Bannuru Police have registered the case against the accused persons for the offences U/secs.457, 380 of IPC and in connection of the said offences, they have seized aforesaid gold items and artificial gold items in question. It is worth to note that the applicant who is also the complainant is claimed that she is the owner of the seized gold and artificial gold items in question.

8. The applicant averred that she is ready to furnish surety and undertakes to abide by the conditions. The Bannuru Police have submitted final report. On perusal of entire charge sheet it is stated that the accused persons have committed theft in the house of CW1 Thayamma who is the applicant in this application. The Bannuru Police have also obtained restatement of CW1 in respect of the seized ornaments. Therefore, having regard to the facts and circumstances of the case, I am of the opinion that if the seized gold items and

artificial gold ornaments are kept with the custody of the police for long period till the disposal of the case, they would be damaged and cause monetary loss to the applicant. There are no rival claimants for the aforesaid properties. For the aforesaid reason's applicant is entitled to get interim custody of the seized gold items and artificial gold ornaments. However, considering the objections filed by the learned APP the application deserves to be allowed with certain conditions. Hence, I proceed to pass the following :

ORDER

The application filed U/sec.457 of Cr.P.C. by the Counsel for the applicant is hereby allowed subject to the following:

CONDITIONS

1. The applicant shall execute indemnity bond for Rs.1,50,000/- and surety bond for likesum.
2. The applicant shall not change the nature of the gold and shall not sell or transfer gold and artificial gold items till the completion of the trial.
3. The applicant shall produce the gold and artificial gold items as and when required by the Court.
4. The I.O is directed to get the photographs of the gold and artificial gold items at the cost of the applicant. The I.O. is directed to submit the photographs along with C.D. and draw the panchanama.

Issue intimation to concerned P.S. to release P.F.No.254/2021 Item No.1. 34.700ml 2 line golden chain, P.F.No.253/2021 item No.1) 10 gms golden bracelet, 2) 4 gms 500 ml golden ear hangings 3) 2gms one ring, P.F.No.255/2021 2gms 700 ml one pair fancy studs(ear ornament), P.F.No.256/2021 item No.1) Artificial gold Long chain, 2) Rold gold Necklace, 3) Artificial gold waist belt 4) Artificial gold Head Mati which are seized by Bannuru Police in Cr.No.249/2018 and subjected in PF No.253/2021, 254/2021, 255/2021 and 256/2021 in favour of applicant if conditions complied.

For compliance by: 27.01.2022.

Civil Judge & JMFC,
T.Narasipura.