

KAUK610000242024



**IN THE COURT OF SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE
FIRST CLASS AT HONNAVARA**

**PRESENT : SRI KUMARA G. B.COM. L.L.B.
SENIOR CIVIL JUDGE AND JMFC
HONNAVARA**

**DATED THIS THE 29TH DAY OF JANUARY, 2024
CRIMINAL CASE NO.05/2024**

**COMPLAINANT : - THE STATE OF KARNATAKA
REPRESENTED BY CIRCLE POLICE
INSPECTOR,
HONNAVARA CIRCLE,
HONNAVARA TALUK.**

**(REPRESENTED BY ASSISTANT PUBLIC
PROSECUTOR)**

-VERSUS-

**ACCUSED : - SRI APZL LIMBU KADHAR GOUSE GAVARI
& ANOTHER**

**APPLICANT : - SMTSAVITRI,
W/O GANAPATHI HALLER,
AGE: 49 YEARS,
OCC: HOUSE WIFE,
R/O MUSUKAL HONNAVARA,
TALUK: HONNAVARA.**

(REPRESENTED BY SMT GSH, ADVOCATE)

**ORDER ON APPLICATION FILED BY THE APPLICANT UNDER
SECTION 451 OF CRIMINAL PROCEDURE CODE, 1973.**

The applicant/CW-1 namely Smt Savithri Ganapathi Haller has filed application under section 451 of Criminal Procedure Code, 1973 for release of

BANGARADA KARIMANI SARA seized and reported to this court as per PF No.175/2023.

02. It is stated in the application that the applicant is the owner of the above stated gold ornament. Honnavara Police have seized the above said gold ornament in their Police Station Crime No.184/2023 which was registered against the accused for the offence punishable under section 392 of Indian Penal Code, 1860. The complainant police have reported the seizure of the gold ornament to the court as per Property Form as per PF No.175/2023 dated 11-11-2023. The seized article is very much necessary for the applicant for day to day use. It is further stated that applicant is ready to comply and abide by the terms and conditions imposed by the court while releasing the gold ornament to her interim custody. It is further stated that applicant is ready and willing to furnish the surety to the satisfaction of report. For the aforesaid reasons the applicant has prayed to release the gold ornament to her interim custody.

03. The learned APP has filed written objection to the application filed for release of gold ornament contending that the seized gold ornament is very much necessary for the purpose of identification during trial. It is further contended that the applicant not produced any documents to show that she is the owner of the siezed gold ornament. It is further contended that if the gold ornament released to the interim custody of the applicant she will change the nature of the gold ornament and in that event it becomes impossible for the witnesses to identify the gold ornament. It is further contended that if the gold ornament is released to

the interim custody of the applicant she may not produce the same during of trial and in that event trail will be hampered. For the aforesaid reasons learned APP prayed to reject the application filed for release of gold ornament.

04. Heard the arguments advanced from both sides.

05. Perused the case papers and other materials available on record.

06. Upon hearing the arguments and on perusal of the materials available on record the following that would arise for my determination:

01. Whether the applicant has made out grounds for release of the gold ornament to her interim custody?

02. What order?

07. My answers to the above points are as follows:

Point No.1 : In the affirmative and

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

REASONS

08. POINT NO.1:- It could be seen from the case papers that the complainant police have registered the case in Crime No.184/2023 on 20-09-2023 against the accused for the offence punishable under section 392 of Indian Penal Code, 1860 in pursuance of First Information lodged by the applicant. Honnavara Police have seized the above said gold ornament on 11-11-2023 in this case and drawn the seizer mahazar and also filed the Property Form as per PF No.175/2023 dated 11-11-2020.

09. It is the contention of the applicant that she is the owner of the above said gold ornament and they are very much necessary for the day to day use. On

the other hand the learned APP has objected for release of the above said gold ornament contending that property is required for investigation; it is required for the identification purpose during trial and if it is released to the applicant she may change its nature and in that event it becomes impossible for the witnessess to identify the gold ornament. It is also contended that the applicant may not produce the gold ornament at the time of trial and in that event the trial will be hampered. The apprehension of the prosecution that if the gold ornament is released to the interim custody of the applicant she may change the nature of the gold ornament or she may alienate the gold ornament or she may not produce the same during of trial and in that event the trial will be hampered can be met with by imposing appropriate conditions. The applicant is ready to abide by the terms and conditions imposed by this court while releasing the gold ornament to her interim custody and the applicant is ready and willing to furnish the surety to the satisfaction of report. That apart the seized gold ornament may be required for the applicant for the day to day use. Moreover there is no rival claim by the accused or anybody for the interim custody of the gold ornament through it has been seized from the possession of the accused. Thus having regard to the facts and circumstances of the case I am of the opinion that the applicant being the first informant and owner of the above said gold ornament she is entitle for the interim custody of the gold ornament subject to terms and conditions. Hence I answered to ***Point No.1 in the affirmative.***

10. POINT NO.2:- In view of finding to Point No.1 and for the discussion made above and reasons assigned, I proceed to pass the following

ORDER

The application filed by the applicant namely Smt Savithri w/o Ganapathi Haller, 49 years, resident of Musuki Manki, Honnavara Taluk under section 451 of Criminal Procedure Code for release of the gold ornament mentioned in serial No.1 of column No.11 of Charge Sheet i.e. Gold Karimani Sara, weighing 13.630 grams to her interim custody is hereby allowed subject to following conditions:

- 1. The applicant shall execute indemnity bond for Rs.1,00,000/- with one surety for like sum.***
- 2. The applicant shall not change or alter the nature or shape of the gold ornament.***
- 3. The applicant shall produce the gold ornament before this court during trial or any other court whenever directed to do so.***

DIRECTION TO THE IO/SHO

The IO/SHO of concerned police station is ordered to release the above said gold ornament only after taking color photographs and also videograph from all the angles of the gold ornament at the cost of applicant and also by conducting proper Panchanama in the presence of witnesses and submit the same forthwith.

(Dictated to the Stenographer directly on the laptop, typed by her, corrected, then signed and pronounced by me in the open court on this the 29th day of January, 2024)
