

KAUK610002762020



**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 14TH DAY OF FEBRUARY, 2023
CRIMINAL CASE NO.76/2020**

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

**(REPRESENTED BY ASSISTANT PUBLIC
PROSECUTOR)**

-VERSUS-

**ACCUSED PERSONS: - 01. SRI SAJJAD AHAMMED,
S/O KUTUBUDDIN GANI,
AGED ABOUT 28 YEARS,
OCC: ARECA NUT BUSINESS,
R/O TOHID MULLA, CHANDAVAR,
TQ: HONNAVARA.**

**02. SRI MUBASIR,
S/O KUTUBUDDIN GANI,
AGED ABOUT 30 YEARS,
OCC: ELECTRICIAN,
R/O TOHID MULLA, CHANDAVAR,
TQ: HONNAVARA.**

**APPLICANTS : - 01. SRI RAMESH MAHABALESHWAR HEGDE,
AGE: 58 YEARS,
OCC: AGRICULTURIST,
R/O BADALLI, MAHASATI CIRCLE,
NAVILGON, TQ: HONNAVARA.**

**02. SMT KUSUMA SURESH NAIK,
AGE: 54 YEARS,
OCC: HOUSEHOLD,
R/O JADDIGADDE CROSS,
TQ: HONNAVARA.**

**(APPLICANT NO.1 IS REPRESENTED BY
SRI PGT, ADVOCATE & APPLICANT NO.2
REPRESENTED BY SRI VVN, ADVOCATE)**

**COMMON ORDER ON APPLICATION NO.III & IV FILED BY THE
APPLICANTS NAMEDLY 1. SRI RAMESH MAHABALESHWAR HEGDE &
2. SMT KUSUMA SURESH NAIK UNDER SECTION 457 OF
CRIMINAL PROCEDURE CODE, 1973.**

The applicant namely 1. Sri Ramesh Mahabaleshwar Hegde filed application No.III and applicant No.2 Smt Kusuma Suresh Naik filed application No.IV under section 457 of criminal procedure code, 1973 for release of gold ornaments.

2. The subject-matter of application No.III

01. Gold Mangala Sutra
02. Gold Chains -2
03. Gold Earrings -1 set
04. Gold Necklace - 1
05. Gold Coin - 1
06. Pearl Necklace – 1
07. Stone, Kuduku, Megha, Mati, Plate
08. Gold Asta Patti Gundu – 8, Locket – 1
09. Gold Earrings – 1 set
10. Big Stone Finger Ring – 1

11. Small Stone Finger Ring – 1

12. Gold Finger Ring – 1

3. The subject-matter of application No.IV

01. Gold Mangala Sutra - 1

02. Gold Chain with locket

03. Gold Necklace

04. Gold Earrings and Kuduku – 2

05. Gold Finger Ring – 2

04. It is stated in the applications that the applicant No.1 and 2 are the owners of the above stated gold articles. The Honnavara Police have seized the above said gold articles in Crime No.158/2019 (CC No.76/2020) which was registered against the accused No.1 and 2 for the offence punishable under section 457 and 380 of Indian Penal Code. The complainant police has submitted Property Form as per PF No.113/2020 dated 01-08-2020 and PF No.115/2020 dated 05-08-2020. The seized articles are very much necessary for the applicants for day to day use. It is further stated that applicants are ready to comply and abide by the terms and conditions imposed by the court while releasing the gold articles to their interim custody. It is further stated that applicants are ready and willing to furnish the surety to the satisfaction of report. For the aforesaid reasons the applicants have prayed to release the gold articles to his interim custody.

03. The learned APP has filed written objections to the applications filed for release of gold articles contending that the seized gold articles are very much

necessary for the purpose of identification during trial. It is further contended that the applicants not produced any documents to show that they are the owner of the seized gold articles. It is further contended that if the gold articles released to the interim custody of the applicants they will change the nature of the gold articles and in that event it becomes impossible for the witnesses to identify the gold articles. It is further contended that if the gold articles are released to the interim custody of the applicants they 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 applications filed for release of gold articles.

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 applicants have made out grounds for release of the gold articles to their 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 present case in Crime No.67/2020 on 02-07-2020 against accused No.1 and 2 for the offences punishable under section

457 and 380 of Indian Penal Code, 1860 in pursuance of First Information lodged by the applicant in application No.III. Honnavara police have seized the property mentioned as Item No.12 in the application No.III (Item No.10 as mentioned in column No.11 of Charge Sheet) in Crime No.158/2019 and reported to the court as per PF No.113/2020 on 01-08-2020. Honnavara police also seized the properties mentioned as Item No.1 to 11 in the application No.III (Item No.12 to 22 as mentioned in column No.11 of Charge Sheet) in Crime No.158/2019 and reported to the court as per PF No.115/2020 on 05-08-2020. Honnavara police have seized the property mentioned as Item No.1 to 3 in the application No.IV (Item No.26 to 28 as mentioned in column No.11 of Charge Sheet) in Crime No.158/2019 and reported to the court as per PF No.116/2020 on 05-08-2020. Honnavara police also seized the properties mentioned as Item No.4 and 5 in the application No.IV (Item No.9 and 11 as mentioned in column No.11 of Charge Sheet) in Crime No.158/2019 and reported to the court as per PF No.113/2020 and 114/2020 on 01-08-2020.

09. It is the specific contention of the applicants that they are the owners of the above said gold articles and it is very much necessary for their day to day use. On the other hand the learned APP has objected for release of the above said gold articles contending that it is required for identification purpose during trial and if is released to the applicant he may change its nature and in that event it becomes impossible for the witnesses to identify the gold articles. It is also contended that the applicants may not produce the gold articles at the time of trial and in that event the trial will be hampered. The apprehension of the

prosecution that if the gold articles are released to the interim custody of the applicants, they may change the nature of the gold articles or he may alienate the gold articles or they 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 applicants are ready to abide by the terms and conditions imposed by this court while releasing the gold articles to their interim custody and the applicant No.1 and 2 are ready and willing to furnish the surety to the satisfaction of report. That apart the seized gold articles are required for the for the daily use. Moreover there is no rival claim by anybody for the interim custody of the gold articles. Thus having regard to the facts and circumstances of the case I am of the opinion that the applicants in application No.III and IV being the owners of the above said gold articles they are entitle for the interim custody of the gold articles 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 No.III filed by the applicant namely Sri Ramesh Mahabaleshwar Hegde, 58 years, resident of Badalli, Mahasati Circle, Navilgon of Honnavara taluk under section 457 of Criminal Procedure Code for release of gold articles mentioned in serial No.1 to 12 of the application No.III and the application No.IV filed by the applicant namely Smt Kusuma Suresh Naik, 54 years, resident of Jaddigadde Cross of Honnavara taluk under section 457 of Criminal Procedure Code for release of gold articles as mentioned in serial No.1 to 5 in application No.IV are hereby allowed subject to following conditions:

1. The applicant in application No.III shall execute indemnity bond for Rs.10,00,000/- with one surety for like sum to the satisfaction of this court.

2. The applicant in application No.IV shall execute indemnity bond for Rs.6,00,000/- with one surety for like sum to the satisfaction of this court.

3. The property offered as surety shall be free from encumbrance and encumbrance shall be created in the property document of the property offered as surety.

4. The applicants shall not change or alter the nature or shape of the gold articles.

5. The applicants shall produce the gold articles before this court or any other court whenever directed to do so.

6. The color photographs shall be taken at the time of release at the cost of the applicants.

(Dictated to the stenographer directly on the laptop, typed by her, corrected, then signed and pronounced in the open court on this the 14th day of February, 2023)
