

KAUK610003072020



**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 18TH DAY OF JANUARY, 2023
CRIMINAL CASE NO.90/2020**

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

**APPLICANT : - SRI BALACHANDRA GANAPATI HEGDE,
AGE: 61 YEARS,
OCC: COOLIE,
R/O HEBBARNAKERE,
KADLE, TQ: HONNAVARA.**

(REPRESENTED BY SRI PGT, ADVOCATE)

**ORDER ON APPLICATION FILED BY THE APPLICANT NAMEDLY SRI
BALACHANDRA GANAPATI HEGDE UNDER SECTION 457 OF
CRIMINAL PROCEDURE CODE, 1973.**

The applicant namely Sri Balachandra Ganapati Hegde has filed an application under section 457 of Criminal Procedure Code, 1973 for release of gold ornaments i.e. Mangala Sutra, two Pavans and one pair earring set.

02. It is stated in the application that the applicant is the owner of the above stated gold articles. The Honnavara Police have seized the above said gold articles in Crime No.195/2019 (CC No.90/2020) 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.115/2020 dated 05-08-2020. The seized articles are very much necessary for the wife of 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 articles to his 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 articles to his interim custody.

03. The learned APP has filed written objection to the application 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 applicant not produced any documents to show that he is the owner of the seized gold articles. It is further contended that if the gold article released to the interim custody of the applicant she 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 applicant he 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 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 applicant has made out grounds for release of the gold articles to his 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.195/2019 on 23-06-2019 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. The Honnavara police have seized the above said gold articles and reported to this court as per PF No.115/2020 dated 05-08-2020.

09. It is the specific contention of the applicant that he is the owner of the above said gold articles and it is very much necessary for his day to day use. The copies of receipts show that the applicant has purchased them. 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 applicant 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 applicant he may change the nature of the gold article or he may alienate the gold article or he 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 articles to his interim custody and the applicant is ready and willing to furnish the surety to the satisfaction of report. That apart the seized gold articles are required for the wife of the applicant 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 applicant being the owner of the above said gold articles he is entitle for the interim custody of the gold article 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 Sri Balachandra Ganapati Hegde, 61 years, resident of Hebbarnakere, Kadle of Honnavara taluk under section 457 of Criminal Procedure Code for release of one Mangala Sutra, two Pavans and one pair of earrings are hereby allowed subject to following conditions:

1. The applicant shall execute indemnity bond for Rs.3,00,000/- with one surety for like sum.

2. The applicant shall not change or alter the nature or shape of the gold articles.

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

4. The color photographs shall be taken at the time of release at the cost of the applicant.

(Dictated to the stenographer directly on the laptop, typed by her, corrected, then signed and pronounced in the open court on this the 18th day of January, 2023)
