

CC No.557/2024

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

This is an application filed by the applicant/claimant by name Sri K. Vinayak Shet, praying to grant the interim custody of Golden Ornaments i.e., Item No.2 silver design pot-2 are weighing 342 grams seized in this case in P.F. No.38/2024, dated 11-05-2024 of Manki Police Station Crime No.50/2024 and Item No.5 one rudraksha mala is weighing 18 grams, Item No.6 silver leg kada-13 are weighing 175 grams, Item

No.7 silver rings-63 are weighing 170 grams, Item No.8 silver ornaments are weighing 212 grams, Item No.9 silver pendants-19 are weighing 18 grams, Item No.10 silver anklets-9 are weighing 122 grams, Item No.11 old silver anklets-7 are weighing 104 grams, Item No.12 one silver flower design hara is weighing 168 grams, Item No.13, 168 pairs of silver toe rings are weighing 1.180 grams seized in this case in P.F. No.39/2024, dated 15-05-2024 of Manki Police Station Crime No.50/2024.

It has been contended in the application that, he is the owner of the gold ornaments and he is the proper and appropriate person for the claim of seized gold ornaments.

Further the applicant is ready to abide by any conditions for the release of above gold ornaments to his interim custody. He also undertakes to produce the said gold ornaments before the Hon'ble Court as well as before the I.O whenever required or directed. He also undertakes not to change the description of the said ornaments or sell it to anybody till disposal of the case. Hence, he prayed to release the above said ornaments to his interim custody.

The learned APP has filed objection to the application contending that, the application is not

maintainable either in law or on facts. The golden ornaments are have been seized in this case. If the said golden ornaments are released to the applicant, he may sell, alienate or change the identity of the said ornaments and he will not produced the same at the time of trial. The claimant has also not produced any document to show his ownership over the seized ornaments. The seized ornaments are very much necessary for identification during the trial. Hence, prayed to dismiss the application.

Heard and perused.

This is a case registered against the accused persons for the offences punishable under section 457, 411 and 380 of Indian Penal Code. The above said golden and silver ornaments have been seized by I.O. The police have produced the said golden ornaments before the Court. But the applicant/claimant contending that, he is the owner of the said golden ornaments. On perusal of the complaint it appears that, the CW-1 has lodged the complaint about stealing of such golden ornaments in his shop.

It is significant to note here that the said properties have been seized by the I.O under mahazar dated 11-05-2024 from the possession of

one Subramanya S/o Padmanabha Shet, Banasale Manki and he admits that accused has committed theft of jewellery shop, Manki which belongs to the complainant. Thus it appears that the seized properties have been stolen by the accused from the shop of complainant/applicant. Hence, it appears that the applicant/claimant is the owner of the said golden and silver ornaments. Further it is significant to note here that the applicant has already moved the application for the interim custody of the some properties seized in the very same P.F No.38/2024 and 39/2024 and application has been allowed by Additional JMFC., Honnavar vide order dated 09-08-2024, such as Serial No.3, 5 to 21 of P.F No.38/2024 and Serial No.2 to 4 of P.F. 39/2024. The remaining properties are claiming through this application. Hence, it appears that the claimant is the owner of the said golden and silver ornaments. It is relevant to note here that, there is no rival claimant. The prosecution has not disputed the ownership of the said golden and silver ornaments.

The keeping the golden and silver ornaments in the court or police station will not serve any purpose.

The Hon'ble Supreme Court in a decision reported in **AIR 2003 SC 638 in between**

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in para 10 of the decision held as here under:

“In our view the powers under section 451 of Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes namely,

- 1) Owner of the article would not suffer because of its remaining unused or by its misappropriation.
- 2) Court or the police would not be required to keep the article in safe custody.
- 3) If the proper panchanama before handing over possession of article is prepared that can be used in evidence, instead of its production before court during the trial. If necessary evidence could also be recorded describing the nature of the property in detail and
- 4) This jurisdiction of the court to record evidence should be exercised promptly. So that there may not be further chance of tampering with the articles.”

In view of the above dictum of the Hon’ble Supreme Court, owner of the article would not suffer because of its remaining unused and keeping the same in court or police station. But by taking the photos and by drawing up the release mahazar it is just and necessary to release the above said golden and silver ornaments to interim custody of claimant

and the said photos and mahazar can be considered at the time of trail. The apprehension of the learned APP may be curtailed by imposing stringent conditions and it is just and necessary to direct the I.O. to draw the release mahazar at the time of release of the golden ornaments to claimant by taking the photos at the cost of the claimant and it produce in this court.

Hence, application deserves to be allowed. Hence, I proceed to pass the following:

ORDER

The application filed U/Sec. 457 of Cr.P.C. is hereby allowed.

The applicant is entitle for the interim custody of the property seized in this case in P.F. No.38/2024 and 39/2024 as here under:

01. Item No.2 silver design pot-2 are weighing 342 grams seized in this case in P.F. No.38/2024, dated 11-05-2024

02. Item No.5 one rudraksha mala is weighing 18 grams,

03. Item No.6 silver leg kada-13 are weighing 175 grams,

04. Item No.7 silver rings-63 are weighing 170 grams,

05. Item No.8 silver ornaments are weighing 212 grams,

06. Item No.9 silver pendants-19 are weighing 18 grams,

07. Item No.10 silver anklets-9 are weighing 122 grams,

08. Item No.11 old silver anklets-7 are weighing 104 grams,

09. Item No.12 one silver flower design hara is weighing 168 grams,

10. Item No.13, 168 pairs of silver toe rings are weighing 1.180 grams and Item No.5 to 13 are seized in this case in P.F. No.39/2024, dated 15-05-2024 on executing the indemnity bond of Rs.3,50,000/- with a surety like sum along with the following conditions.

1. The applicant/claimant shall not change the identity of the golden and silver ornaments or modify the same.
2. The applicant/claimant shall not sell the golden and silver ornaments till disposal of the case.
3. The applicant/claimant shall produce the golden and silver ornaments as and when directed by this court.
4. The applicant/claimant shall produce the photo and negative

before getting interim custody of the golden and silver ornaments.

5. I.O. is directed to draw the release mahazar at the time of release of the golden and silver ornaments by taking the photos of the same at the cost of claimant and produce the same in this court.

If violated the conditions, the indemnity bond stands cancelled automatically.

Call on for hearing date for production of surety.

Sd/-
Senior Civil Judge & JMFC,
Honnavar.