

**IN THE COURT OF THE PRINCIPAL SESSIONS JUDGE,
UDUPI DISTRICT, UDUPI**

Present

Sri C.M. Joshi, B.Sc., L.L.M.
Prl. Special/Sessions Judge, Udupi.

Dated this the 17th day of August, 2019

S.C. No.27/2017

Claimant:

Shobha Nayak, 51 years,
W/o Sathish Nayak,
R/o "Anugraha",
Sannakkibettu,
Herga Village, Udupi Taluk.

(By: Sri Prashanth Sagar G., Advocate)

Vs

Respondent:

The State: By Manipal Police

By: Public Prosecutor, Udupi

ORDER

This order arises out of an application filed under Section 457 of Cr.P.C. by the claimant Shobha Nayak seeking the release of the gold ornaments and other articles as mentioned in the application, to her interim custody.

2. The claimant has stated in her application that she is the victim in the above case and the owner of the properties, i.e., the gold ornaments, mentioned in the petition schedule as the same were robbed from her house on 13-12-2016 by the accused. Hence, she lodged a complainant, the Manipal Police registered the same and during investigation, the Investigating Officer arrested the accused and seized the gold ornaments and other articles and investigation has already been completed and charge sheet has been filed. It is further submitted that the petitioner requires the gold ornaments for her daily wearing and other properties, like spade, pickaxe and iron rod for doing agriculture works and the said properties are not all required for further investigation. She undertakes to abide by any conditions that may be imposed by the Court for release of the properties mentioned in the petition schedule. Thus, the said seized properties were released to her interim custody.

3. The application is opposed by the learned Public Prosecutor by filing objection contending that the application filed by the claimant is not in accordance with law and all the averments made in the application could not be accepted

unless they are proved. The claimant has to prove that the said seized articles belong to her. The fact that some of the seized articles were used for commission of the offence is proved during the course of investigation. It is further contended that if the said articles are released, there is likelihood of selling the same and it will cause damage to the case of the prosecution and the alleged offences are heinous offences. Therefore, the application be rejected.

4. I have heard both the sides and perused the records.

5. The only point that arises for my consideration is:

“Whether the claimant is entitled for interim custody of the seized articles as prayed in the application?”

6. My finding, on the above point, is partly in the affirmative, for the following:

REASONS

7. The prosecution alleges that the accused had committed dacoity in the house of the complainant and later the Police have arrested the accused and seized some of the articles belonging to the complainant. Evidently these

articles belong to the complainant and I do not find any reason to detain these articles in the custody of the Court when the claimant is a lady and willing to abide by the conditions that may be imposed by the Court. The photographs of the ornaments would serve the purpose of identification of the ornaments and when the accused have not claimed these articles, there is no reason to detain the same. The argument of the learned Public Prosecutor that the claimant has to prove her title of the ornaments and also plastic bag appears to be ridiculous and unsustainable. When the Police have seized the property from the accused on the basis of the complaint filed by the complainant and such property having been identified by the claimant, I do not find any reason to hold that the claimant is not entitled for the interim custody of the golden articles. However, the claim of the claimant in respect of spade, pick-axes and iron digging bar cannot be sustainable. Therefore, except the said articles, other remaining articles are liable to be released to the interim custody of the claimant. Hence, the point raised above is answer partly in the affirmative, and the following order is passed:

ORDER

The application filed by the claimant under Section 457 of Cr.P.C. is partly allowed.

Except Hoe (spade), pick-axes and iron digging bar, the remaining articles, i.e., gold black-bead chain (karimani chain), gold earring one set and panasonic flat screen T.V. are ordered to be released to the interim custody of the claimant with a condition that she shall execute an indemnity bond for a sum of Rs.1,00,000/- with one surety for the like sum to the satisfaction of the Court with the following conditions:

- 1.The claimant shall not alienate, sell, change the colour or transfer the said articles in any manner.*
- 2.She shall produce the said articles before the Court or before the I.O., whenever directed to do so.*
- 3.She shall produce the photographs of the said articles before the Court.*

(Dictated to the Judgment Writer, the transcript thereof is corrected and then pronounced by me in the Open court, this the **17th** day of **August, 2019**)

(C.M. Joshi)
Principal Sessions Judge,
Udupi.