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**IN THE COURT OF ADDITIONAL DISTRICT AND
SESSIONS JUDGE, UDUPI (SITTING AT
KUNDAPURA)**

DATED THIS THE 11th DAY OF MARCH, 2025

PRESENT:

**Sri Abdul Rahim Hussain Shaikh,
B.Sc., B.Ed., LL.B.(Spl.)
Addl. District and Sessions Judge,
Udupi (sitting at Kundapura)**

Spl.Case No.508/2021

Applicant/Accused	Shivarama Achar, aged 57 years S/o Laxman Achar, Residing at Door No.1-151, Kambadakone Village Byndoor Taluk, Udupi District
	AND
Respondent	The State Anti Corruption Bureau police station (By Advocate Sri T.B. Shetty)

ORDER

The applicant – Shivarama Achary has filed an application of U/s.457 of Cr.P.C. praying to release the gold items mentioned in schedule of the petition, which was seized and subjected to P.F. No.10/2017.

2. It is contended in the application filed by applicant/accused that the mahazar has been drawn at the official quarters of the petitioner wherein the police have seized various articles. It is further contended that the said ornaments are required for religious and other family functions of the applicant and his wife and if gold ornaments are not released, the petitioner will be put to great loss and hardship. It is further contended that there is no rival contentions . Hence, prayed to allow the applications.

3. The learned Special Prosecutor has filed objection to the application and submitted that the application is not maintainable in law or on facts of the case. It is submitted that to prove the ownership of gold ornaments, no document are produced by the applicant/accused. In the objection, it is contended by the prosecution that if the said items are released, there is likelihood that he would alienate the properties

mentioned in the application and the said properties would not be available at the time of trial. Hence, has prayed for dismissal of the application.

4. Heard both the learned counsel for the applicant and learned special prosecutor.

5. The following points arise for my consideration are:

1) Whether the applicant has made out grounds to allow the application?

2) What order?

6. My answer to the above points is as follows :

Point No.1 : in the affirmative

Point No.2 : as per final order,
for the following:

REASONS

7. **Point No.1:** In this case, the applicant has filed application for the release of properties mentioned in schedule of the application.

8. Per contra, the prosecution contended that the case has been registered against the accused for the

offences under Sections 13(1)(E) r/w 13(2) of Prevention of Corruption Act 1988 and if they are released, there is every chance that the applicant might dispose off the said properties and it would be difficult to secure the same for identity at the time of trial and prays to dismiss the application.

9. On perusal of the records, it is found that already charge sheet is filed in this case and the case is at the stage of Hearing Before Charge. It is found that there is no counter claim on the said properties by any of the parties till date. There are no rival claimants for the above said items. Further it is very important to note that the seizure of gold items from the possession of the accused through panchanama is not disputed. Further it is the contention of the petitioner that they required the gold items for their interim custody and abide by the conditions that they would not change the nature of the gold ornaments and the said ornaments are required for daily use. It is the main contention of the prosecution that if the gold ornaments are released to the interim custody of the applicant, then there is every chance of changing the nature of gold ornaments and also the said ornaments will not be

available for trial , it would cause prejudice to the prosecution case. At this juncture, I would like to Consider the dictum of law laid down by the Hon'ble High Court of Karnataka in **Crl. Revision Petition No.200033/2020 dated 28-09-2020 between Smt Amrutha Wife of H.B. Mallappa Vs State by Anti Corruption Bureauo**, wherein the Hon'ble High Court has clearly held that by imposing stringent conditions, if the properties are released, it would meet the objections of the prosecution and there is no impediment in releasing the said properties to the interim custody of the applicant with certain conditions in order to safeguard the interest of prosecution. It is very pertinent to note that there is no dispute that the said properties are seized from the possession of the accused and no counter is filed. Further I would like to refer the ruling produced by the applicant reported in **CRL.R.P. No.210/2024 dated 04-10-2024 between Shri Vishal Ramesh Khatwani and State of Karnataka**, wherein the Hon'ble High Court of Karnataka has clearly held that the Magistrate possesses sufficient discretionary power to ensure that the seized property is not alienated and identity thereof is not altered.

Wherever necessary action can also be issued to produce the same as and when required during the trial can also be issued while passing release order when there is no rival claim in respect of schedule properties. The Court has also relied on the judgment of the Hon'ble Supreme court reported in **Sundarbhai Ambala Desai Vs State of Gujarat reported in AIR 2003 SC 638**, wherein the Hon'ble Supreme court held that if proper panchanama before handing over the possession of the article is prepared, that can be used in evidence in stead of its production before the Court during the trial and the owner of the article would not suffer because of its remaining unuse or by its misappropriation. By applying the above dictum of law to the present on hand, it is found that if stringent conditions are imposed, the purpose of prosecution objection would be met with. Accordingly, the applicant has made out the ground to release the properties mentioned in the application. **Accordingly, I answer point No.1 in the partly Affirmative.**

10. Point No.2: In view of answer of this Court on point No.1, this court pass the following:

ORDER

The application filed by the applicant/Shivarama Achar U/s.457 of Cr.P.C. is hereby allowed.

The properties that is 2 gold bangles with havala weighing 35.740 grams, 2 gold bangles studded with pearls weighing 27.570 grams, chain and pendent weighing 9.50 grams, Kashi Thali weighing 63.880 grams, one pair gold stud weighing 2.08 grams, one pair of gold ear rings with hanging weighing 10.550 grams, gold Delhi cutting chain weighing 15.890 grams, gold musty chain (Musti sara) weighing 15.700 grams, gold baby ring weighing 2.200 grams, silver thambige weighing 121.00 grams, silver Kalu deepa weighing 122.00 grams, 3 silver boxes (belliya Karadigegalu weighing 125.00 grams, 4 silver boxes (belliya karadigagalu) weighing 52.600 grams, silver theerthada Kowlige with spon weighing 55.00 grams worth Rs.4,92,930/- which was seized and subjected to PF No.8/2017 are ordered to be released to the interim custody of the

applicant Shivarama Achar on his executing an Indemnity Bond before getting release of the gold ornaments upon the valuation made by the appraiser or for a sum of Rs. 10,00,000/- with one surety for likesum , subject to the following conditions:

1. The applicant shall not alienate the said properties;
2. He shall not change the colour, identity of the aforesaid properties in any manner;
3. He shall produce the aforesaid properties as and when directed by the Court.
4. The I.O. is directed to take photographs from all angles of the aforesaid properties and carry out with due mahazar at the cost of applicant. Alongwith the printed photographs, the I.O. is also directed to produce C.D. of the said digital photographs alongwith certificate under Section 65(B) of Indian Evidence Act. The same condition will be applicable for the release if the properties are already produced to the Court.
5. After compliance of condition No.4, the concerned PI/IO should submit the same to

Court without fail immediately after compliance.

6. The PI/I.O., after receipt of release intimation shall release the aforesaid properties, which were seized and subjected to PF No.8/2017 to the interim custody of applicant after complying the above conditions Nos.4 and 5.

Office is directed to issue intimation accordingly.

(Typed to my dictation by the Stenographer directly on Computer, corrected by me and then pronounced in open Court on this the **11th day of March, 2025**)

(Abdul Rahim Hussain Shaikh)
Addl. District and Sessions Judge,
Udupi, (sitting at Kundapura)