



RCC No.162/2020

State Vs. Raj

CNR No.MHLA120008902020

Order below Exh.28

1. Applicant has filed present application for the return of Bormal of 10 gram., Zumkhe of 7 Gram., Ring of 5 Gram., Shivanpis of 15 gram., Sarpale of 5 Gram. and one ladies ring which are more particularly described in para No.2 of the present application (in short “seized gold ornaments”) seized by Aurad Shahajani police station in the Crime No.03/2020.

2. It is contention of applicant that, applicant is owner and possessor of seized gold ornaments. She uses the said seized gold ornaments for her daily use. If the seized gold ornaments are not released then the value of said ornaments will be diminished. The police has seized afore gold ornaments in Cr.No.03/2020. She is ready to abide conditions imposed by this court. Hence, she prayed for return of the seized gold ornaments on the bond.

3. A.P.P. filled his say and contending that seized gold ornaments is piece of evidence, there is possibility of alienation, making any changes in original structure, if return to applicant. Lastly, he prayed to reject the application.

4. Perused documents and affidavit of applicant. It seems from the record that applicant Prayagbai is of 65 years old lady. She has received gold ornaments in her marriage as a stridhan. Her marriage was took place prior to 45-50 years back. Therefore, she unable to file original purchase receipt of gold ornaments. Applicant has filed affidavit on record by stating that she is the owner of gold ornaments. Police has filed charge-sheet on record.

5. In the case of **Sundarbai Vs. State reported in AIR 2003 SC 638**. The Apex court observed that -

“In our view, the powers U/sec. 451, Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely -

(i) Owner of article would not suffer because of its remaining unused or by its misappropriation.

(ii) Court or the police would not be required to keep the article in safe custody.

(iii) If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of property in detail; and

(iv) This jurisdiction of the court to record evidence should be exercised promptly so that they may not be further chance of tampering with the articles.

6. In support of her contention she has filed affidavit on record. Therefore, taking into consideration affidavit filed on the record and price of seized gold ornaments interim custody of it, can be given by imposing some conditions.

7. No fruitful purpose will be served by detaining it in the custody of the police. Hence, considering the nature of the offence and the documents available on record the applicant being the owner of seized gold ornaments is entitled for the interim custody of the said property. Hence I proceed to pass following order.

ORDER

1. Application is allowed.

2. The **Bormal of 10 gram., Zumkhe of 7 Gram., Ring of 5 Gram., Shivanpis of 15 gram., Sarpale of 5 Gram. and one ladies ring** be released in favour of the applicant viz. Prayagbai Eknath Halade, R/o. Masobawadi, Tq. Nilanga on her executing the indemnity bond of

Rs.4,00,000/- (Rs.Four Lakh only) on the following terms and conditions;

- (a) The applicant shall not change colour and physical features of the seized gold ornaments except repairs till the decision of the case.
- (b) The applicant shall not alienate or create any extra charge upon the seized gold ornaments till decision of the case.
- (c) The applicant is directed to produce seized gold ornaments before the Court as and when directed.

3. The I.O. is directed to take the photographs of the seized gold ornaments in order to establish its identity during the trial and I.O. shall prepare the panchnama of the handing over it to the applicant. Said panchnama shall be attested by the applicant and her witness and shall be part and parcel of the charge-sheet.

4. The I.O. is directed to take the Supurtnama from the applicant.

5. The order be informed to the I.O.

Date 16/11/2021

(**N.A.L. Shaikh**)
Judicial Magistrate First Class,
(Court No.2), Nilanga.