

MHRG110002112022



ORDER BELOW EXH. 27 IN R. C. C. NO. 70/2022
(Passed on 18.10.2022)

This is an application filed by the applicant Swati Shashikant Kasar under section 451 of the Code of Criminal Procedure, 1973 for release seized muddemal i. e. 1) one gold necklace, 2) one small necklace, 3) three gold rings, 4) one gold a nath, 5) two big ear rings, 6) two nose flashes, 7) two small ear rings, 8) two silver painjan, 9) two silver bracelets, to avoid confusion regarding nature of the ornaments, the ornaments mentioned in marathi language as under (एक सोन्याचे मोठे मंगळसुत्र तीन तोळे वजनाचे, एक सोन्याचे छोटे मंगळसुत्र एक तोळे वजनाचे, तीन सोन्याच्या अंगठ्या त्यामध्ये एक सोन्याची तोळ्याची, दुसरी अर्ध्या तोळ्याची व तिसरी दोन ग्रॅम वजनाची, एक सोन्याची नथ मोत्याचे मणी असलेली दिड ग्रॅम वजनाची, दोन कानातील सोन्याचे मोठे जोड, एकुण चार, पाच ग्रॅम वजनाचे, दोन सोन्याच्या नाकातल्या चमकी दोन ग्रॅम वजनाच्या, दोन कानातले सोन्याचे छोटे जोड एकुण चार, दोन ग्रॅम वजनाचे, दोन जोड चांदीचे पायातील पैजण व दोन जोड चांदीचे हातातील कड) which is seized by police station, Mangaon in Crime No. 190/2021 in offence punishable under Section 454, 457, 380 r/w. 34 of the Indian Penal Code.

2. It is further submitted by the applicant that, she is entitled to get possession of the seized gold ornaments and she is ready to abide any conditions imposed by the court. Therefore, she prayed for grant application.

3. On this application say of Investigating Officer and the learned A. P. P. was called. Investigating officer has filed say at Exh. 31 and submitted that, the police have no objection to handover seized muddemal i.e. 1) one gold necklace, 2) one small necklace, 3) three gold rings, 4) one gold a nath, 5) two big ear rings, 6) two nose flashes, 7) two small ear rings, 8) two silver painjan, 9) two silver bracelets total worth of Rs. 2,65,000/- (Rupees Two Lakh Sixty five Thousand Only).

4. The learned A. P. P. has filed say and raised objections on ground that, the applicant is not owner, applicant not filed copy of F. I. R. of this application. Hence, pray to reject the application.

5. The applicant has filed documents below list vide Exh. 29 in support of this application. The applicant filed receipts of golden bangles, her identity card and copy of F. I. R. It is pertinent to note that, husband of the applicant has filed affidavit and submitted that, he has no objection to handover to her wife i.e. applicant. On perusal of documents, it appears that, the name of the applicant's husband mentioned in the receipt of seized muddemal. No any other persons claim for the seized muddemal.

6. It is clear that order passed under section 451 of Criminal Procedure Code is only temporary arrangement of seized muddemal with proper person as the Court thinks fit, and the same will have live force till disposal of the main case. In whose

favour custody of muddemal is granted he has no independent right in the muddemal till final disposal of the main case.

7. In the present matter, Investigating Officer filed their say, it appears that he has no objection to hand over seized muddemal i. e. gold ornaments to the applicant.

8. If the seized muddemal is kept lying in the premises of police station, Mangaon, Raigad it will be damage and will cause loss to the applicant. Except the applicant, no one has claimed custody of seized muddemal. The name of the husband, of the applicant mentioned in the receipts. However, he has no objection to handover seized muddemal to her wife.

9. I do not see any reason to deny the applicant's prayer for releasing said seized muddemal in her custody. In view of the directions of the Hon'ble Supreme Court in the matter of *Sunderbhai Ambalal Desai V/s. State of Gujrat (A.I.R. 2003 Supreme Court 638)*.

10. In the light of aforesaid discussion and ratio laid down by the Hon'ble court in above judgments. I find that the applicant is proper person to possess the seized muddemal. Accordingly, I proceed to pass the following order.

ORDER

1. Application is allowed.

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2. The Police Officer, Police Station, Mangaon, Raigad, is hereby directed to handover seized muddemal i.e. 1) one gold necklace, 2) one small necklace, 3) three gold rings, 4) one gold a nath, 5) two big ear rings, 6) two nose flashes, 7) two small ear rings, 8) two silver painjan, 9) two silver bracelets total worth of Rs. 2,65,000/- (Rupees Two Lakh Sixty five Thousand Only) which was seized in Crime No. 190/2021, in the custody of applicant on executing indemnity bond of Rs. 2,65,000/- (Rupees Two Lakh Sixty five Thousand Only).
3. The applicant is strictly directed not to alienate, sell, change or disposed of the seized ornament in any manner till, final decision of above said crime of case and produce it as and ordered or required by the court.
4. Breach of any above condition will liable for the cancellation of bond.
5. The applicant is directed to make save ornaments available, whenever asked by the Court.
6. The Police Officer, Police Station, Mangaon, Dist. Raigad is directed to prepared details panchanama and shall take three colour photographs of said muddemal with counter signature of the applicant.

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7. Copy of this operative order be sent to the office of the Police Officer, Police Station, Mangaon, Dist. Raigad for necessary action.

Mangaon,
Date : 18.10.2022

(G. C. Fulzalke)
Judicial Magistrate First Class,
Mangaon, Dist. Raigad.