



ORDER BELOW EXH. 23 IN R. C. C. NO. 175/2021
(Passed on 30.06.2022)

This is an application filed by the applicant Sonali w/o. Sumit Tembe under section 451 of the Code of Criminal Procedure, 1973 for release seized muddemal i.e. gold ornaments which is seized by Police Station, Goregaon in Crime No. 67/2021 in offence punishable under Section 420, 406, 328 r/w. 34 of the Indian Penal Code and The Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman Evil and Black Magic Act, 2013.

2. It is further submitted by the applicant that, she is the registered owner of 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. 27 and submitted that, the police seized muddemal i. e. 1) Nine finger rings weight 11.240 gram, 2) three golden chain weight 20.730 gram, 3) one golden chain weight 14.560 gram, 4) one golden neckles weight 33.530 gram and 5) pair of ear ring (कर्णफुलाचा सोन्याचा एक जोड) weight 4.210 gram total worth of Rs. 2,69,640/- (Rupees Two Lakh Sixty Nine Thousand, Six Hundred

Fourty) from the possession of the accused. Therefore, called say of the accused persons, learned counsel of the accused No. 1 filed say and submitted that she has no objection to hand over seized muddemal to the applicant. Further, submitted to pass suitable order. Accused No. 2 and 3 have not filed their say. Hence, no say order passed against them and application taken up for decide without their say.

4. Investigating Officer filed say at Exh. 27 and submitted to pass suitable order.

5. The learned A. P. P. has filed say and raised objections on ground that, the applicant has not filed documents regarding ownership of seized muddemal. Hence, pray to reject the application.

6. The applicant has filed documents below list vide Exh. 31 in support of this application. The applicant filed receipts of golden chain. The applicant filed affidavit at Exh. 32 and submitted that, except above golden chain other gold ornaments gifted to her by her relatives in the marriage. Therefore, the applicant does not have the receipts of other gold ornaments.

7. It is important to discuss the following judgment of Hon'ble Madras High Court.

In the case of B. Lalithchand Nahar vs State By Insepctor Of Police, 1991 CriLJ 1111, dated 30th July, 1990.
The Hon'ble Madras High Court held that the order under section

451 of Criminal Procedure Code is only for a temporary arrangement to provide custody with a proper person as the Court thinks fit, even if such person is the owner of the property, his possession or custody is only as representative of the Court and not in his independent right.

8. Now, 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.

9. In the present matter, Investigating Officer and accused filed their say, it appears that they have no objection to hand over seized muddemal i. e. gold ornaments to the applicant.

10. If the seized muddemal is kept lying in the premises of Police Station, Goregaon, Raigad it will be damage and will cause loss to the applicant. Except the applicant, no one has claimed custody of seized muddemal.

11. 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)*.

12. 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 partly allowed.
2. The Police Officer, Police Station, Goregaon, Raigad, is hereby directed to handover seized muddemal i.e. 1) Nine finger rings weight 11.240 gram, 2) three golden chain weight 20.730 gram, 3) one golden chain weight 14.560 gram, 4) one golden neckles weight 33.530 gram and 5) pair of ear ring (कर्णफुलाचा सोन्याचा एक जोड) weight 4.210 gram total worth of Rs. 2,69,640/- (Rupees Two Lakh Sixty Nine Thousand, Six Hundred Fourty) which was seized in Crime No. 67/2021, in the custody of applicant on executing indemnity bond of Rs. 2,70,000/- (Rupees Two Lakh Seventy Thousand).
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.

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6. The Police Officer, Police Station, Goregaon, Dist. Raigad is directed to prepared details panchanama and shall take three colour photographs of said muddemal with counter signature of the applicant.
7. Copy of this operative order be sent to the office of the Police Officer, Police Station, Goregaon, Dist. Raigad for necessary action.

Mangaon,
Date : 30.06.2022

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