MHRT130000142021

ORDER BELOW EXH.29
(Passed on 25th day of September 2023)

1. Read application. Perused say given by Investigating Officer vide Exh.44, Ld. APP vide Exh.36, say of accused No.2 below the same application and accused No.1 vide Exh.45 as well as say of husband and son of deceased vide Exh.39 and 40. Heard Ld. APP for State and Ld. Counsel for applicant.

2. On going through the record, it reveals that the present application is moved by the applicant under section 451 of the Code of Criminal Procedure for returning the amount of Rs.1,10,000/- (55 currency notes each of Rs.2,000/- denomination) seized by Police of Guhagar Police Station in C.R.No.49/2020 in the offence under section 302, 379, 397, 201, 120-B r.w.34 of IPC. It is submitted on behalf of applicant that she is a daughter of deceased Sunetra Sunil Durgule who has been murdered for the amount of Rs.7,00,000/-. The deceased was working as Manager in Vidarbha Konkan Gramin Bank Branch Veldur Tal.Guhagar and she has withdrawn Rs.7,00,000/- from her account of Union Bank of India and Bank of India Branch Chiplun for the purpose of purchasing gold ornaments. However since 16-09-2020 at 6-41 p.m. her mobile was not reachable and then it became switched off. Therefore the deceased's husband started proceeding towards police station to lodge report but he has received a telephonic message from Guhagar police station that dead body of his wife is floating in the water of Vashishti creek. Accordingly during

investigation police arrested the accused and seized amount of Rs.7,00,000/- from the possession of accused. It is further submitted that the investigation of this case has been completed and chargesheet has been filed in Court against the accused Nos.1 and 2. However in the seized amount the amount of Rs.1,10,000/- consisting of 55 currency notes of Rs.2,000/- denomination and in view of direction of Central Government and as per the circular of RBI dated 19-05-2023, there is possibility of bar to the currency of Rs.2,000/- denomination. As such the last date for changing the said currency from the bank is upto 30th September, 2023. In such circumstances the applicant submitted to return 55 currency notes of Rs.2,000/- denomination worth Rs.1,10,000/- by taking its descriptions through the Investigating Officer and prayed for allowing application.

3. The Ld.APP and Investigating Officer submitted their say vide Exh.36 and Exh.44 and brought to the notice of this Court that the amount mentioned in the application has been seized by police during investigation from accused No.1. The said amount is deposited in the Deputy Treasury Office Guhagar. During the investigation it has been transpired during the investigation that the seized amount including the amount of Rs.1,10,000/- consisting of 55 currency notes of Rs.2,000/- denomination owned by the deceased. Therefore by taking entry in respect of number of 55 currency notes of Rs.2,000/- denomination the amount can be changed through RBI Belapur, Navi Mumbai. The Ld. APP submitted that by adopting this procedure the amount can be returned to the applicant and prayed accordingly.

4. It is matter of record that as the offence is under

section 302 of IPC, therefore say of deceased husband and son as well as say of accused have been called accordingly vide exh.39,40,45. It is submitted by the husband and son of deceased that they have no objection to return the seized amount Rs.1,10,000/- consisting of 55 currency notes of Rs.2,000/- denomination to the applicant. However the accused No.1 and 2 strongly objected the application and submitted that if the said amount will return to the applicant she will change the nature of alleged currency notes and it will adversely affect on the trial.

5. Having regard to the arguments advanced by learned counsel of both parties and taking into consideration the attending circumstances of the case it appears that the police of Guhagar Police Station registered the offence vide C.R.No.49/2020 under section 302, 379, 397, 201, 120-B r.w.34 of IPC against accused Nos.1 and 2. It is a matter of record that during the course of investigation the Investigating officer seized the amount of Rs.7,15,000/- from the possession of accused No.1 and 2. The Ld. APP brought to the notice of this Court that the amount of Rs.1,10,000/- consisting of 55 currency notes of Rs.2,000/- denomination is seized amount by police during investigation from the possession of accused No.1 and 2. Admittedly as per the direction of Central Government and circular of RBI, the last date of changing the currency note of Rs.2,000/- denomination is 30-09-2023. In view of such circumstances at this juncture I would like to take recourse of observation of Hon'ble Apex Court in case of **Sunderbhai Desai Vs. State of Gujarat** reported in 2002 Supp(3) SCR on 1 October, 2002 has held that,

> "The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

6. In view of the above preposition of Law and considering the attending circumstances on record as well as relevant documents, I found that the amount of Rs.1,10,000/- consisting of 55 currency notes of Rs.2,000/- denomination seized by police during investigation which owned by deceased and applicant is a daughter of deceased. It is also seen from the record that the husband and son of the deceased have given no objection to return thesaid amount to the applicant. Besides this the Ld. APP and IO also submitted that the seized amount belongs to deceased

and applicant is her daughter, therefore it can be returned to her. In the light of above circumstances and considering the relevant documents on record as well as provisions and above said case laws I found that applicant is entitled for seized amount of Rs.1,10,000/- (55 currency notes of Rs.2,000/- denomination) for changing it through bank before 30-09-2023. Accordingly, by taking the detail description of above said seized amount along with photographs it can be returned to the applicant. Hence in the interest of justice I am inclined to allow the application and proceed to pass the following order.

ORDER

1. The application is allowed.

2. The seized amount of Rs.1,10,000/- consisting of 55 currency notes of Rs.2,000/- denomination be returned to the applicant for changing it through bank on executing indemnity bond (supratnama) of Rs.2,00,000/- (Rs.Two lakhs only) subject to conditions that the applicant will not expend the amount Rs.1,10,000/- till final disposal of the case.

3. The investigating officer is directed to take the detail particulars including photographs and number of 55 currency notes of Rs.2,000/- denomination each and prepare the panchanama accordingly.

4. Informed police station accordingly.

dr. Anita Shrirang Newase

Digitally signed by dr. Anita Shrirang Newase
Date: 2023.09.25 17:20:28 +0530

(Dr. Anita S. Newase)
Additional Sessions Judge
Chiplun.

Date- 25.09.2023

Certificate

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Case Number		Sessions Case No.2/2021
Name of Stenographer	:-	Mrs.V.S.Kulkarni
Name of Court	:-	Addl. Sessions Court Chiplun.
Date of Dictation on computer	:-	25.09.2023
Order signed by the P.O. on	:-	25.09.2023
Order uploaded on	:-	25.09.2023