

MHWR030015222023



Order below Supratnama Application Exh.1

(Dt. 14/08/2026)

The present application has been filed for seeking the release of amount of Rs. 17,846/- in pursuance to complaint No.31901230001565 registered with Cyber Cell, Wardha.

2. Say filed by I.O. and A.P.P. The Ld. A.P.P. has objected to release the said amount in favour of the applicant. However, I.O. has not objected to release the said amount in favour of the applicant.

3. Heard Ku. Uke, Ld. counsel for the applicant and Ld. A.P.P. Perused documents.

4. The applicant submitted that, on receipt of a phone call from suspected mobile no. 8972293734, he transferred an amount of Rs. 51,488/- through online Phonepay. Accordingly, he made a complaint with Cyber Crime Department about this fraud transaction. On perusal of say of I.O. it reveals that, during investigation an amount of Rs. 17,846/- was put on hold with Indian Bank (including Allahabad Bank). However, the concerned bank are not made party to the present application. Therefore, the seizing authority or holding authority is not on the record. Hence, present release order cannot cannot be granted.

5. In the landmark case *Sunderbha1 Ambalal Desai vs State Of Gujarat (AIR 2003 SUPREME COURT 638)* the various dimension of return of property are discussed. In this case, in view of question of custody of property another landmark case is

discussed i.e. as follows -

Smt. Basawa Kom Dyanmangouda Patil v. State of Mysore and Anr. ([1977] 4 SCC 358). In this case, this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under- "4. 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. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. 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. This may particularly be necessary where the property concerned is subject to speedy or natural decay. 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 High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. 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 legal position i.e the fundamental section 457 of the Cr.P.C. as well as the landmark precedent, it is clear that, for the application of 457 of the Cr.P.C. and for the release of property under this provision, its seizure and police custody of property over it, is mandatory. In the instant case, there is no custody of the police over the claimed amount. Further the holding authority is not the party. Therefore, the question of its release doesn't exists as it is not under the direct or indirect control of this Court. Therefore, this Court is of the opinion that, the application deserves to be rejected. Hence, following order -

ORDER

The application is rejected.

Wardha.
Date : 14/08/2026

(Smt. M. R. Chavan (Hiwarale))
Judicial Magistrate First Class,
(Court no.2), Wardha.

Certified that PDF copy of Order supra is word-to-word identical to the original Order.

(I.K.Khan)
Stenographer Grade-II