

**IN THE COURT OF JUDICIAL MAGISTRATE (FIRST CLASS),
36th COURT MUMBAI CENTRAL, MUMBAI.**

C. C. NO. :- 02/MISC/2025.

Railway Police Station :- Mumbai Central.

C. R. NO. :- 849/2024

Smt. Mohini Soniya Kamble.

.... Applicant.

V/s.

The Sr. Inspector of Police,

(Railway Police Station, Mumbai Central, Mumbai).Respondent.

ORDER BELOW EXH.- 01

This is an application moved by the applicant Smt. Mohini Soniya Kamble, R/o., Byculla, Mumbai, under Section 503 of the B.N.S.S. thereby seeking the interim custody of one sackbag, golden Chain of 7.47 gm, Golden Ear tops of 3.33 gm, 3 pairs of shoes, Rs. 10,000/- in cash, Pan Card, Aadhar Card, wallet and clothes in connection with C. R. No. 849/2024, registered for the offence punishable under Section 134, 305 (C) of the B.N.S.

2. Applicant request to release the property on the ground that, the property is lying into the custody of respondent. She undertakes to produced it as and when required by this court. She is ready and willing to abide by each and every imposes by this court.

3. The Ld. Asst. P.P. and I.O. filed their say and have no objection to release the property in favour of the applicant on certain terms and conditions.

4. Heard both sides.

5. Under section 503 of the B.N.S.S. only the entitlement of possession of seized article has to be considered by the Magistrate. It is the contention of the present applicant that, she is the owner of the seized property. To substantiate her contention she has produced on the record the Copy of purchase bills of said articles i.e. Golden Chain of 7.47gm, Golden Ear tops of 3.33 gm and copy of her Aadhar Card. These documents shows her lawful entitlement over the property. As per the law, the copy of purchase bill is the valid proof of title of the said article. As per the said purchase bills the applicant is the owner of said articles. So far as the cash amount is concerned, the applicant has not filed any document in that regard. But the present application is filed on affidavit. Therefore, there is no reason to disbelieve the applicant so far as interim custody of cash amount is concerned.

6. In the case titled *Sunderbhai Desai V/s. State of Gujrat A.I.R 2003 SC.638*, the Hon'ble Apex Court has held that, once the ownership of the applicant over article is ascertained, the power under Section 451 of the Code of Criminal Procedure should be exercised by the Magistrate expeditiously and judiciously so that the owner of the article would not suffer because of its remaining unused or by its misappropriation. It is further observed that, 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. It is also held that, if necessary, evidence could also be recorded describing the nature of the property in detail.

7. Therefore, so far as the question of requirement of the said articles for its identification purpose at the trial is concerned, in my view if the photographs of the said articles are taken and the same

are kept on the record, the said photographs may be used at the trial to prove the identity of the said articles and there is no need of its actual production before the Court. Furthermore, as observed by the Hon'ble Supreme Court in the case *supra* the identity of the seized article can be also proved by the witness by giving its detailed description in his evidence. Therefore, withholding the custody of said article for the reason that, the same would be required for its identification purpose at the trial would be unjustifiable ground at law.

8. In view of the above, the application therefore needs to be allowed. Hence, I pass the following order :-

ORDER

1. The application is partly allowed.
2. The interim custody of seized muddemal i.e. Golden Chain of 7.47gm, Golden Ear tops of 3.33 gm and Cash of Rs. 7000/- seized by Mumbai Central Railway Police Station, Mumbai, in connection with C.R No. 849/2024, registered for the offence punishable under Section 134, 305(C) of B.N.S. be given to the applicant on further following conditions :-
 - (a) Applicant shall execute indemnity bond of Rs. 80,000/- (Eighty Thousand).
 - (b) That she shall produce the said article, as and when required by the police or the Court.
 - (c) That she shall not change the nature of the said article, or alienate the same in any way without the

permission of Court.

- (d) That the I.O. shall take the photographs of the said articles and prepare the panchanama at the time of releasing the said articles.
- (e) That the said photographs shall be countersigned by the applicant as well as the accused.
- (f) The I.O. shall prepared detailed panchnama of said articles before handing it over to the applicant. The I.O. shall submit the copy of panchnama along with the charge sheet.
- (g) Inform the I.O. accordingly.

sd/-

(B. K. Gawande)

Judicial Magistrate (First Class),
36th Court, Mumbai Central, Mumbai.

Date : 18/01/2025.
ASS.