

Order Below Application to release Muddamal u/s.451 & 457 of the Criminal Procedure Code.

The Applicant has filed present application to release amount which has been freezed by the Cyber Crime Unit. The Applicant is victim of Cyber Fraud and as and when the applicant came to know about the fraud which has been occurred with the applicant, the applicant immediately taken help of Cyber Crime Unit and the amount which was transferred from his/her account was freezed by the Cyber Crime Unit. The Applicant has prayed before this Court to release the amount which has been freezed by the Cyber Crime Unit. The Details of the Applicant is as under:

Name	KETANBHAI C PATEL		
Bank Details	HDFC BANK A/c No. 50100068037116 IFSC CODE-HDFC0001229		
Amount (Cheated)	92000/-		
Bank Details of Suspicious Person	HDFC BANK A/c. No. 50100537554635		
Freezed Amount	30000/-		
Sr. No.	Date of Complaint	Ticket / Complaint No.	
1	07/03/2023	31103230026701	

The Opinion of Dy. Superintendent of Police, State Cyber Crime Cell, CID Crime, Gandhinagar was called for by the Investigating Officer of concerned Police Station. He has opined that on the complaint of the complainant above referred amount was freezed in suspicious Bank Account. He has clearly opined that the amount may be returned to the applicant, as per the condition of the Hon'ble Court.

Looking to the facts of the case, there is no FIR has been filed in present case and no one has been arrested in this regard. Though the long time has been passed, no one has come before to release the freezed amount except the applicant. As per the opinion of the competent authority, the account in which amount is freezed found suspicious and hence amount is required to be returned to the applicant. Before deciding present application, provisions of Section-457 is required to be taken into consideration, which reads as under.

457.Procedure by police upon seizure of Property.

- (1) Whenever the seizure of property by any police officer is reported to a Magistrate Under the Provisions of this code, and such Property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession there of, of such person cannot be ascertained, respecting the custody and production of such property.
- (2) If the person so entitled is known the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and

requiring and person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such Proclamation.

In view of the above provisions, as per section-457(1) the Magistrate is empowered to release the property which was seized by the Police Officer during investigation. Further, the Hon'ble Gujarat High Court in Govind Tejabhai Bariya Vs. State of Gujarat, 2001(2) GLH 726 has held in para no. (9.2), (10) and (22) as under:

(9.2)..... Shri Pandya has cited so many authorities with regard to legal possession of Sec. and Sec. of CrPC. Here in this case owner lodged a complaint in the police station for which offence has been registered for theft having been committed in respect of two vehicles. That two vehicles have been found from the possession of the purchaser but at the same time the investigating Officer has come to a conclusion that complainant has filed a false case and therefore muddamal vehicles are seized during the course of the police investigation and Investigating Officer has reported about such seizure of two vehicles, from the purchaser to the Court and therefore Section 457 of CrPC will be applicable. In no case Sec.451 Cr.P.C. will be applicable to this case. Sec.457 of Cr.P.C. Reads as follows:

"Sec.457 Procedure by police upon seizure of Property:

[(a) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during and inquiry of trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.]

"(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such condition (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall in such case issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

(10) On reading aforesaid section, it is crystal clear that words "may make such order as he thinks fit" are of much importance. When word 'may' is used discretion has been given to the learned Magistrate, of course that discretion is to be exercised judicially keeping in mind the well settled principles of law. The words "to the person entitled to the possession thereof" are also important and relevant. From the papers if the learned Magistrate has come to a conclusion that particular person is entitled to the possession of the vehicles then he can pass the order directing the muddamal article to be handed over to that person. From record it appears that the purchaser has paid Rupees 3,10,000/- to the owner of the vehicles and society was knowing about the fact that owner has already vehicles to purchaser.

(22) As discussed earlier, when the learned Magistrate has followed the decision of this Court, in Hussain Amitbhai Qureshi (supra), it cannot be said that he has passed an order contrary to well settled legal position with regard to return of muddamal articles under Sec.457 of CrPC pending the inquiry.

In view of the above discussion, fact of the case, this Court is of the view that there will not be any dispute regarding identification of muddamal in future. Further as held in the Judgment of Hon'ble Supreme Court in Sunderbhai Ambalal Desai Vs. State of Gujarat, 2003(1) G.L.H. 307, the application is required to be allowed and in the interest of justice, I pass the following order.

:: O R D E R ::

The application of applicant is hereby allowed u/s.457 of the Criminal Procedure Code.

The Applicant is ordered to provide surety/bond of one and half time amount which were freezed by the Cyber Crime Unit before concerned police station and Investigation Officer is directed to release the amount as interim custody in the Bank of Applicant as mentioned above, on following conditions.

Further, after depositing the surety/bond amount by the applicant before the concerned Police Station, the Police Officer is directed to inform the banks about the said order. The said bank i.e. **HDFC BANK**, as mentioned above and its Officials are also directed to transfer the Freezed Amount in the Account of Applicant mentioned as above within the 10 days after getting information from the Police Station and inform the Concerned Court and Police Station accordingly.

Condition:

- 1) The Applicant is directed to produce Muddamal before this Court as and when requires.
- 2) If the Account Holder of Freezed account claims the money in future, in that case the applicant has to surrender the amount which is transferred in his account.
- 3) Until final disposal of this case, applicant is directed not to transfer amount of Muddamal to any other person.
- 4) Muddamal amount should not used in any illegal act.
- 5) In case of breach of any condition, interim order of Muddamal amount will automatically canceled and the amount of muddamal will seized and amount of guarantor will be required to be deposited before this Court.

The order is pronounced in open Court in Special Sitting held on 09th September, 2023.

Dt:09/09/2023
Ahmedabad

[DR. P.A.PARMAR]
Chief Judicial Magistrate,
Ahmedabad (Rural), At-Mirzapur.
UID.NoGJ00752