

Order below Exh.1 in Cri. M. A. no. 457/2024
Ravindra Sahebrao mane Vs. State
(C. R. No.35/2024, Shivajinagar P.S., offence p/u/s. 394, 341
r/w. Sec. 34 IPC)
CNR NO MHPU040172382024

- 1) This is an application for getting back the custody of OPPO Mobile having Model of A16, IMEI no.861831051083539, gold chain weighing 5 gram and cash of Rs.11,000/- seized in C. R. No. 35/2024 of Shivajinagar Police Station registered under Section 394 and 341 read with Section 34 of the Indian Penal Code.
- 2) Perused the say filed by Investigating Officer and learned A. P .P for the State. I. O. has no objection to return mobile, chain and cash to the applicant on certain terms and conditions. Learned learned A. P .P has strongly opposed the application by submitting that muddemal is required for identification at the time of trial.
- 3) Heard both sides at length.
- 4) Applicant has filed on record copy of F. I. R., copy of Invoice receipt of mobile, copy of his Adhar-card no. 2826 0818 5010 and copy of his bank account statement of the TJSB Sahakari Bank Ltd., which is in the name of the applicant. The applicant also filed *pursis* and submitted that he is the owner of seized gold chain weighing 5 gram. However its purchase receipt was lost. In case the mobile, cash amount and golden chain is not released and it is kept in the police station, then there is every possibility of serious damage and it will even cause injustice to the lawful owner.
- 5) Before parting, considering the nature of application, it is necessary to refer the verdict of Sunderbhai Ambalal Desai Vs. State of Gujarat, A I R 2003 Supreme Court 638, wherein it is observed by the Hon'ble Apex Court that valuable articles and currency notes with regard

to valuable articles, such as golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, Magistrate should pass appropriate orders as contemplated under Section 451 Cr.P.C. at the earliest. For this purposes, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:-

- (1) preparing detailed proper panchanama of such articles:
- (2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and
- (3) after taking proper security.

For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr. P .C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs or such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the Court under Section 451 Cr.P.C. to impose any other appropriate condition.

6) In view of these observations by the Hon'ble Supreme Court, it is necessary to direct the Investigating Officer to take photographs of seized gold article and to produce the same alongwith the police report for perusal at the time of trial. Accordingly, I proceed to pass the following order.

ORDER

- 1) Application is allowed.
- 2) Custody of OPPO Mobile having Model of A16, IMEI no.861831051083539, gold chain weighing 5 gram and cash of Rs.11,000/- seized in C. R. No. 35/2024 of Shivajinagar Police Station registered under Section 394 and 341 read with Section 34 of the Indian Penal Code, be handed over to the applicant Ravindra Sahebrao mane on furnishing Indemnity Bond of Rs.60,000/- before Police Inspector Shivajinagar Police Station, Pune.
- 3) Before giving the custody of the aforesaid gold ornament, I. O. should snatch the photographs of the ornament clearly showing the labels of signatures of panchas and to affix these photographs alongwith the charge-sheet by following the directions given in the verdict of Sunderbhai Ambalal Desai Vs. State of Gujarat, A I R 2003 Supreme Court 638 by the Hon'ble Supreme Court.
- 4) Applicant is directed not to alter the nature of mobile and golden chain and not to sale the same or to create third party interest therein and he shall produce the same before the Court as and when directed.
- 5) Issue letter to the concerned Police Station to do the needful.

Date: 26.04.2024

(J. S. Bhatia)
Additional Chief Judicial Magistrate
Pune

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

Name of Steno : V.B.Lalsangi (Grade-II)
Court Name : Addl. Chief Judicial Magistrate, Pune.
Date of order : 26.04.2024
judgment signed by P.O. on : 26.04.2024
judgment uploaded on : 26.04.2024