

Spl ACB Case No.13 of 2019  
Filing No.1373 of 2019  
CNR No.- WBCS01-001376-2019

Order No.27  
Dated 12.02.2025

Today is fixed for filing compliance report by the I.O. and for order on the petition dated 20.06.2024 u/s 451 of Cr.P.C.

The accused Manik Sarkar is present by filing hazira.

The Ld. Chief P.P. has also filed hazira on behalf of the prosecution.

A compliance report submitted by the I.O. is duly forwarded by the Ld. Chief P.P. wherefrom it appears that the Service Book of Smt. Shipra Majumder (wife of the accused) and Acquaintance Rolls of Sunitibala Sadar Girls' High School which was seized from Head Mistress of the said High School and were handed over to her on 21.11.2019 under proper jimmanama, have finally been released on 11.02.2025 in compliance with the order of this Court.

Record is now taken up for order on the petition dated 20.06.2024 u/s 451 of Cr.P.C.

Perused the petition and other materials on record.

It is stated that on the basis of a complaint filed by one Narayan Chandra Bhowmick an FIR being No.12/2019 dated 08.11.2019 was registered and the instant case (being Special Case No.13/2019) u/s 7 of P C Act was started against the accused/petitioner Manik Sarkar. That a trap was laid on 09.11.2019 at the petitioner's residence at Tamluk leading to recovery of the alleged bribe money of Rs.1,00,000/- and other articles from the residential flat of the petitioner and a seizure list was prepared. That on the same day and on subsequent dates, search operations were also conducted in different places and seizure lists were prepared. That the ACB officials also started a Disproportionate Assets case (being Special Case No.16 of 2019 arising out of ACB PS Case No.13/2019 dated 20.12.2019) against the petitioner.

That after completion of investigation, charge sheet was submitted u/s 7 of the P C Act in the earlier mentioned trap case while u/s 13(2)/13(1)(b) of the P C Act and Section 109 of IPC in the subsequent Disproportionate Assets case.

The specific case of the petitioner is that during search, the ACB police in order to harass and humiliate the petitioner and his wife, seized the personal belongings including Bank Documents, Keys of the Lockers, Jewelleries, Investment Documents and other articles including the Service Book of the petitioner's wife unnecessarily. Accordingly, it is prayed that there be a direction of return of all the seized articles. The petitioner also enclosed a list of articles seized by the ACB police on different dates (Schedule A to Schedule G).

During hearing a report was called for from the I.O. of this case and the Holding Officer, Jyotirmoy Mondal of ACB PS filed a report dated 30.08.2024 which was forwarded by the Ld. P.P. on 04.09.2024. From the said report it appears that the alamat mentioned in the instant petition were not relied upon in ACB PS Case No.12/2019 (i.e. the instant case) but all these alamat were taken and considered during investigation of ACB PS Case No.15/2019 (D A Case). A copy of the written intimation addressed to this Court by the I.O. of the D A Case is enclosed with the said report, wherefrom it appears that after getting the related documents from the I.O. of ACB PS Case No.12/2019 (i.e. the instant case), the I.O. of the D A Case was analyzing the same for the interest of investigation.

Since it was not mentioned in the said report whether those alamat seized in the instant case, were re-seized in connection with ACB PS Case No.15/2019, a further report was called for. Pursuant to such direction, two different reports dated 21.11.2024 submitted by Inspector, Prolay Basu (I.O. of ACB PS Case No.15/2019) and dated 12.12.2024 submitted by Deputy S P, Subrata Kumar Paul (I.O. of ACB PS Case No.12/2019) were submitted. Both these reports were forwarded to this Court by the Ld. P.P. on 16.01.2025. From both these reports, it appears that the alamat seized in the instant case were not re-seized in connection with ACB PS Case No.15 of 2019. However, it was explained that as no other agency was involved and these are not predicate offence, re-seizure was not carried out but the documents seized in the instant trap case (ACB PS Case No.12/2019) are used and relied upon in the D A Case (ACB PS Case No.15/2019). However, it is clear from the report dated 12.08.2024 of SI Jyotirmoy Mondal that all the alamat mentioned in the instant petition are not shown relied upon in the instant case.

In support of his contentions, the Ld. P.P. relied upon a decision reported in **(2023) 1 HCC (Mad.) 321** where the Hon'ble Court rejected the claim of the appellant over a property seized during investigation of a Disproportionate Assets Case which resulted in acquittal. It was observed that the prosecution may fail to prove the guilt of the accused and the case may end in acquittal for want of proof but the suspected wealth seized cannot be returned back to the accused unless he proves it was legally acquired.

The referred case is clearly distinguishable from the case in hand, in which a petition u/s 451 of Cr.P.C. for custody of the property pending trial is in question. Moreover, in the referred case, the appellant failed to establish right over the property while in the instant case, there is no dispute regarding the ownership of the property. Even the properties in question were not seized in the Disproportionate Assets Case and most of the alamat are not relied upon in the instant case (u/s 7 of the P C Act).

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The Ld. Advocate for the accused relied mainly on the decision of the Hon'ble Supreme Court in **Sundarbhai Ambalal Deshai's Case reported in AIR 2003 SC 638** where the Hon'ble Apex Court observed that the powers u/s 451 of Cr.P.C. should be exercised expeditiously and judiciously so that,

i) Owner of the article would not suffer because of its remaining unused or by its misappropriation.

ii) Court or the police would not be required to keep the articles in safe custody.

iii) If proper Panchnama before handing over the possession of the articles is prepared, that can be used in evidence instead of its production before the Court during trial. If necessary, evidence could also be recording describing the nature of the property in detail and

iv) This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

It was the view of the Hon'ble Court that seized articles should not be kept in the custody of the Court or the police for any longer period than is absolutely necessary. Although there was no clear finding in the referred decision on whether the property showing the assets of an accused in a Disproportionate Assets Case are to be kept in the custody of the Court or police during the entire length of trial, the instant case is a trap case u/s 7 of the P C Act and in view of the report of the I.O., all the alamats seized in this case are not relied upon in the instant case.

Since the Disproportionate Assets Case is a separate case which is not tried analogously with the trap case, this Court cannot consider the necessity of keeping these articles, which were not even re-seized in the D A Case. Since all the seized alamats are not relied upon in the instant case, I find no other alternative but to return them in the custody of its owner (petitioner herein) in view of the spirit of the decision of the Hon'ble Apex Court in the above referred case. While doing so, I find it would be appropriate to direct the I.O. to prepare a detailed Panchnama/Inventory of the articles after taking photographs of such articles at the cost of the petitioner.

Accordingly, it is,

**ORDERED**

that the instant petition u/s 451 of Cr.P.C. is allowed on contest.

The I.O. of this case is directed to return all those alamats seized in connection with this case which are not relied upon by the prosecution in the instant case (Spl Case No.13 of 2019), to the petitioner on his executing a bond and on giving an undertaking that he will not sell, pledge, change the features of the articles and produce them as and when required by the Court.

The I.O. is also directed to take steps to prepare necessary Panchnama/Inventory of the articles to be returned to the petitioner and take individual photographs of those articles at the cost of the petitioner. The whole exercise should be completed within a period of three weeks after which the I.O. shall file a compliance report before this Court.

Let a copy of this order be given to the I.O. for compliance.

At this stage, a petition has been filed on behalf of the accused Manik Sarkar seeking necessary direction upon the ACB officials. Copy served to the prosecution.

Fix **21.03.2025** for hearing the petition filed today by the accused and compliance report by I.O.

To date for further evidence of PW 1.

Prosecution to take steps.

Dictated & corrected by me.

Judge, Bench – II,  
City Sessions Court,  
Calcutta.  
J.O. Code No. WB00868

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