

**In the Court of Additional District and Sessions Judge,
Gangarampur at Buniadpur, Dakshin Dinajpur.**

Sess. Case 77 of 2023

CNR No. WBDD05-000308-2023

**Present- Smt. Melissa Gurung
Addl. Dist. & Sess. Judge
Gangarampur at Buniadpur,
Dakshin Dinajpur.**

07

03-06-2024

Accused persons five (05) on C.B are present by filing hazira.

Ld. Addl. P.P-in-charge files hazira on behalf of the State.

The application dated 30-11-2023, for return of seized articles, is taken up for hearing today.

Heard both sides. Considered.

Perused the report of the I.O wherein he has expressed objection to the return of the seized articles.

The contention of the accused-petitioner Bijay Kumar Agarwal is that the 12 pieces of gold biscuits seized by Gangarampur Police on 05-12-2020 from the possession of Sadhana Sarkar is owned by the applicant and that the said gold biscuits should be returned to the applicant. The gold biscuits according to the petitioner originally to his father Durga Prasad Agarwal, since deceased, and was a subject matter of 18 gold biscuits earlier seized by the BSF Officers. The said biscuits was subsequently returned to the Durga Prasad Agarwal by the order of the Customs, Excise and Service Tax Appellate Tribunal. The order of the Appellate Tribunal dated 24-08-2006 in CDM 151, 155, 156/ 03 is annexed with the application. It is further contended that the accused No.1, from whom the biscuits were seized is the staff of the applicant/ accused and the vehicle which was used belonged to the brother of the applicant.

The petitioner claims that since the gold biscuits belonged to the accused no case is made out u/s 411/413/414 of the I.P.C and as such the gold biscuits which belongs to the accused should be returned to him.

The Ld. Addl. P.P-in-charge objects to the return of the said articles on the ground that the said articles is the subject matter of the offence and as such should not be returned.

The case, as made out by the prosecution is, that the accused Sadhna Sarkar and Mithun Das took the 12 gold biscuits from Bikash Kr Agarwal and his brother Bijay Kr Agarwal for the purpose of smuggling it to the Jharkhand and the said gold biscuits were recovered during Naka Checking. The Charge Sheet has been submitted against the accused persons for offence punishable u/s 411/413/414 of the I.P.C.

Section 411 deals with the offence of receiving stolen property, Section 413 deals with the habitually dealing in stolen property and Section 414 deals with the offence of assisting of concealment of stolen property.

Here, the alleged stolen property are the gold biscuits which have been deposited in Balurghat Treasury-I. The order of the Appellate Tribunal gives the ownership of the said biscuits to one Durga Prasad Agarwal but the applicant here is not Durga Prasad Agarwal and no certificate of death of Durga Prasad Agarwal has been submitted in this Court nor any document relating to his relationship with the accused is produced. The order of the Appellate Tribunal in a different proceeding cannot hold much sway in the decision of the Criminal Court in a different proceedings where Charge Sheet has been submitted against the accused persons. If the Court agrees to the contention of the accused petitioner regarding the ownership of the gold biscuits and returns them to him then it is prejudging the entire case and thus prejudging the prosecution without giving it the opportunity to bring evidence to prove its case.

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It is true that this Court has ample power for disposal of the property pending trial in certain cases (Section 451 of the Cr.P.C) but such disposal is subject to the property being subject to speedy and natural decay or if it is otherwise expedient to do so and such disposal can be made after recording of evidence.

In the instant case the recording of evidence has not yet started and the property concerned is not subject to speedy and natural decay. In fact the lapse of time would increase the value of the property and not decrease it. It must also be mentioned here that the accused petitioner has failed to produce the cash memo which had been produced before Appellate Tribunal to prove their claim of ownership.

This claim is again subject to proof in the criminal trial.

Therefore, the application for return of seized property is refused.

Fix **11-07-2024** for appearance and consideration of charge.

Dictated & Corrected by

**Addl. Dist. & Sess. Judge,
Gangarampur at Buniadpur,
Dakshin Dinajpur.**

**(Melissa Gurung)
(WB-00842)
Addl. Dist. & Sess. Judge,
Gangarampur at Buniadpur,
Dakshin Dinajpur.**