



CRL.P No. 7105 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 7105 OF 2022

BETWEEN:

M/S NAMBOOR JEWELLERS
HAVING BUSINESS
AT C.T. STREET
BENGALURU – 560 051
REPRESENTED BY ITS PROPRIETOR
SRI VIDYASAGAR.

...PETITIONER

(BY SRI. PRASHANTH P.N., ADVOCATE)

AND:

STATE BY LASHKAR POLICE STATION
MYSURU – 570 001
REPRESENTED BY
SENIOR PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

...RESPONDENT

(BY SRI K.S.ABHIJITH, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO A. SET ASIDE THE IMPUGNED ORDER OF DISMISSAL PASSED BY THE HONBLE VI ADDL. DISTRICT AND SESSIONS JUDGE, MYSORE IN CRL.RP.NO.232/2020 DATED 19.01.2022 VIDE ANNEXURE-A, CONFIRMING THE ORDER OF THE IV ADDL. SENIOR CIVIL JUDGE AND JMFC, MYSORE DATED 10.11.2020 ON AN APPLICATION FILED U/S 451, 457 OF CODE OF CRIMINAL PROCEDURE IN



CRL.P No. 7105 of 2022

CR.NO.34/2020. B. TO CONSIDER THE APPLICATION OF THE APPLICANT/PETITIONER FILED U/S 451, 457 OF CODE OF CRIMINAL PROCEDURE FOR RELEASING OF THE SEIZED GOLD INGOT OF 500 GRAMS BY THE COMPLAINANT POLICE UNDER PF.NO.31/2020 IN CR.NO.34/2020 TO INTERIM CUSTODY OF THE APPLICANT/PETITIONER TILL THE DISPOSAL OF THE CRIME.

THIS PETITION COMING ON ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question an order dated 19.01.2022, passed in Cri.R.P.No.32/2020, by the VI Additional District and Sessions Judge, Mysuru, whereby, confirming the order dated 10.11.2020, passed in Crime No.34/2020, by the IV Additional Senior Civil Judge and JMFC, Mysuru, registered for offences punishable under Sections 406 and 420 of the IPC, whereby, the learned Magistrate turns down the application filed by the petitioner under Sections 451 and 457 of the Cr.P.C. seeking interim custody of gold bullion seized in P.F.No.31/2020.

2. Heard Sri. P.N.Prashanth, learned counsel appearing for the petitioner and Sri K.S.Abhijith, learned



CRL.P No. 7105 of 2022

High Court Government Pleader appearing for the respondent.

3. The petitioner claims to be the victim in the complaint registered by the Complainant, one Indar Chand D., against Hameed Ali, who is arrayed as accused No.1. The complaint becomes an FIR in Crime No.34/2020. In the said crime, during the course of the investigation, the police had recovered half kilogram of gold from the shop of the petitioner and the same is reported before the Court in P.F.No.31/2020, as it was involved in the transaction.

4. The issue is not with regard to the merit of the crime so registered by the complainant against the aforesaid accused. The issue in the subject petition is that the petitioner claims to be the victim of the alleged illegal fraudulent activities of accused No.1 and therefore, the petitioner files an application before the concerned Court under Sections 451 and 457 of the Cr.P.C. seeking interim custody of gold bullion in P.F.No.31/2020. That having



CRL.P No. 7105 of 2022

been turned down by the learned Magistrate, is what drives the petitioner before this Court in the subject petition.

5. Learned counsel representing the petitioner would contend that the petitioner being the victim is entitled to in law for an interim custody of the seized gold bullion, which even in terms of the investigation belongs to the petitioner. The reason rendered by the learned Magistrate to decline the application particularly, insofar as it concerns the gold bullion of the petitioner, was erroneous and runs counter to the judgment rendered by the Apex Court in the case of ***SUNDERBHAI AMBALAL DESAI v. STATE OF GUJARAT***¹.

6. Learned HCGP though would put up vehement objection to the contentions so advanced and admits that the P.F.No.31/2020 belongs to the petitioner but cannot be released till the trial proceedings are completed and would seek dismissal of the petition.

¹ **(2002) 10 SCC 283**



7. I have given my anxious consideration to the respective submissions made by the learned counsel and perused the material on record.

8. The afore-narrated facts are not in dispute and therefore are not required to be reiterated. The application filed by the petitioner for interim custody of gold bullion on the reason so stated in the application, ought to have been entertained by the learned Magistrate as the Apex Court considering the very provision of law in the case of **SUNDERBHAI AMBALAL DESAI** (*supra*), holds as follows:

"7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. court or the police would not be required to keep the article in safe custody;



CRL.P No. 7105 of 2022

3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. 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.

11. 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, the Magistrate should pass appropriate orders as contemplated under Section 451 CrPC at the earliest.

12. For this purpose, 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 panchnama 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.

13. For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of 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 CrPC to impose any other appropriate condition.

21. However, these powers are to be exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month.



CRL.P No. 7105 of 2022

This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly."

(emphasis supplied)

In the light of the judgment of the Apex Court in the afore-quoted case, that the gold bullion or gold ornaments if seized, the maximum period that it could be held is 15 days or one month and later, it should be released and interim custody should be handed over to the victim/complainant/applicant.

9. If the order passed by the learned Magistrate is considered on the bedrock of principles laid down by the Apex Court in the aforesaid judgment, it would on the face of it, run foul, as the Court holds that there are no sufficient grounds made out by the petitioner for interim custody of the gold bullion.



10. For the aforesaid reasons, the following:

ORDER

I. Criminal petition is allowed.

II. Interim custody of PF No.31/2020 is directed to be handed over to the petitioner, subject to the following conditions:

- 1) The prosecution shall prepare detailed and proper panchanama of such articles;
- 2) Take photographs of such articles, and a bond that such articles, would be produced, if required at the time of trial.
- 3) Proper and adequate security shall be taken by the Investigating Officer.

Ordered accordingly.

**Sd/-
JUDGE**