

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.988 OF 2015

Surendrakumar Radheshyam Verma ... PETITIONER

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Mrs. Shobha B. Warma, Advocate holding for
Shri B.R. Warma, Advocate for petitioner
Shri A.P. Baraskar, A.P.P. for respondent
.....

CORAM: N.W. SAMBRE, J.

DATED: 23rd October, 2015.

ORAL ORDER :

1. While exercising powers under Section 457 of the Code of Criminal Procedure, the learned Judicial Magistrate, First Class, Parola, by an order dated 22.5.2015, has released the property which was seized from the custody of the applicant, but for the 15 cartons each containing 3000 DVDs.

2. The perusal of the order does not reflect as to the reason for which the request for releasing the said DVDs was rejected.

3. The learned counsel for the applicant, while trying to make out the case for release of the said articles, relying upon the judgment of the Apex Court in the matter of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **(2002) 10 Supreme Court Cases 283**, would urge that the applicant since was ready and willing to execute appropriate bond towards the security/ indemnity for release of the said goods, the order of release should have been passed. The learned counsel then submitted that the investigation in the matter is already complete and the charge sheet is filed. As such, by detaining the said goods, no fruitful purpose would be served as the DVDs which are detained/ in the custody of the investigating agency/ Court are blank DVDs and the non utilisation of the same for long period shall result into damage to the same if not stored in appropriate form.

4. The learned A.P.P., while opposing the application, would urge that the goods were seized in a serious crime which is punishable under Sections 292, 293 read with Section 34 of the Indian Penal Code read with the provisions of the Copyright Act. According to him, there is every likelihood that if the goods are released, the same would be put to use while committing crime and as such, the Court below was right in rejecting the same.

5. Having analysed the submissions, it is required to be noted that the Apex Court, in the matter of Sunderbhai Desai (*supra*), while considering the scope of Sections 451 and 457 of the Code of Criminal Procedure, has laid down certain parameters which are required to be taken into account while dealing with the prayer for release of the articles seized in an offence. The appropriate reliance can be placed in view of the observations made in para No.7 and para No.12 of the said judgment.

6. It is also required to be noted herein that, while rejecting the prayer for release of the blank DVD cartons, no reason whatsoever is assigned, but for likelihood of the use of the said material for commission of the crime in future. In view

of the submissions and undertaking by the learned counsel for the applicant that the released goods shall not be used for the commission of crime in future, this Court is inclined to order release of the same. As a consequences of above order, the applicant herein is directed to approach the learned Judicial Magistrate, First Class, Parola, who is directed to order release of the said goods on such terms and conditions as shall be deemed fit and appropriate in the circumstances of the case.

7. Criminal Writ Petition is disposed of.

(N.W. SAMBRE, J.)