

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1562 OF 2016

Manoj Kumar Rungtha

... Petitioner.

V/s.

The State of Maharashtra & Anr.

... Respondents.

Mr. Kamlesh Mishra i/by M/s. Law Juris, Advocate for the
Petitioner.

None for the Respondent- State.

CORAM : RAVINDRA V. GHUGE,J.

DATE : 31 MARCH, 2017.

P. C. :

1 This matter was heard at length on 24.03.2017 and was posted to 27.03.2017 for passing orders. However, due to change in assignment, this matter came up before this court (Coram : Smt. Sadhana S. Jadhav, J.) on 27.03.2017 and it was observed that the applicant/petitioner may seek appropriate orders from the Hon'ble Chief Justice for placing this matter before the same court (Coram : Myself). The Hon'ble Chief Justice has accordingly directed that this matter be placed before me.

2 When this matter was heard on 24.03.2017, the articles at issue which are old currency notes of an amount of Rs. 73,000/- were to be returned to the petitioner in the light of the observations in paragraphs 11, 12, 13 and 14 of the judgment delivered by the Hon'ble Supreme Court in the matter of **Sunderbhai Ambalal Desai & Anr. vs. State of Gujarat** (AIR 2003 SC 638).

3 The petitioner is aggrieved by the impugned order of the trial court dated 22.01.2016 by which the seized cash amount of Rs.73,000/- is directed to be returned to the petitioner on executing an indemnity bond for Rs. 1,00,000/- (Rs. One lakh only) with one or two local (adjoining to Mumbai) solvent surety of the like amount and to produce the said amount of Rs. 73,000/- as and when required by the court.

4 For the sake of brevity, the operative part of the impugned order dated 22.01.2016 is reproduced as under :

- i. Application for return of seized amount of Rs. 73,000/- is allowed.
- ii. Seized cash amount Rs.73,000/- which is seized by the police during the investigation of crime No.461/2015 of P.S.L.T. Marg, Mumbai

be given to the applicant/informant Manojkumar Rungtha only on executing his indemnity bond of Rs.1,00,000/- with furnishing one or two local (adjoining to Mumbai) solvent surety of like amount before court on condition that applicant shall produce the said seized amount of Rs.73,000/- as and when required as per the order of court.

iii. In case of breach of above condition applicant has to face further consequences for breach of order.

iv. I.O. to prepare detailed punchnama while handing over the seized cash amount to the applicant in presence of two witnesses. Applicant and I.O. Shall produce compliance report on record.

v. As charge-sheet is filed by the I.O. this case, hence applicant to execute indemnity bond before court.”

5 The Hon'ble Apex Court in Sunderbhai Ambalal's case, cited supra, has observed in paragraphs 11, 12, 13 and 14 as under :

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, Magistrate should pass appropriate orders as contemplated under Section [451](#) Cr.P.C. 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](#) 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 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](#) Cr.P.C. to impose any other appropriate condition.

14. In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the Court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in police custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the Court may direct that such articles be handed over back to the Investigating Officer for further investigation and identification. However, in no set of circumstances, the Investigating Officer should keep such articles in custody for a longer period for the purpose of investigation and identification. For currency notes, similar procedure can be followed.

6 Considering the above, this petition is partly allowed and the impugned directions of the trial court are modified as under :

- (a) The Application for return of seized amount of Rs. 73,000/- is partly allowed.
- (b) The cash amount of Rs. 73,000/-, seized by the police during the investigation of Crime No.461 of 2015, Police Station L.T.Marg, Mumbai, be returned to the applicant/petitioner Manojkumar Rungtha, after complying with the following directions :

- i) The Petitioner shall prepare colour xerox copies of each of the seized notes (front side as well as back side) and get each of such colour xerox notes laminated under the supervision of the Investigating Officer, as earlier directed by the trial court.
- ii) A punchanama of the said laminated notes would be performed in the presence of two witnesses by the I.O., after verifying the laminated colour xerox notes with the original seized cash. The said laminated notes would then be placed before the trial court and would be exhibited.
- iii) The seized cash of Rs. 73,000/- shall thereafter be returned to the petitioner on the condition that the petitioner would furnish a bank guarantee for a maximum amount of Rs.1,00,000/- before the trial court and the said bank guarantee shall be valid during the trial and for a period of three months after the delivery of the judgment by the learned trial court in CC No. 949/PW/2015.
- c) Since the seized cash amount of Rs. 73,000/- which is being returned to the petitioner, comprises of old currency notes of the denomination of Rs.500/- and Rs.1000/-, the petitioner would be at liberty to deposit

the said amount on or before the 15th Day of April, 2017 with the Reserve Bank of India, Main Building, Fort, Mumbai.

d) Considering the above, the petitioner shall comply with the directions before the trial court on or before the 7th Day of April, 2017 so that he would be in a position to return the old currency notes of Rs. 73,000/- to the Reserve Bank of India, Main Building, Fort, Mumbai on or before 15th April, 2017.

e) The Petitioner while depositing the said amount with Reserve Bank of India shall make a proper application, accompanied with a copy of his "Aadhar Card", Election Commission's Voters ID Card and shall annex a copy of this order to the said application, to be furnished to the competent authority of the Reserve Bank of India.

f) Considering the peculiar facts of this case, as above, the concerned authorities of the Reserve Bank of India would accept the said currency notes, keeping in view this order.

7 All concerned to act on an authenticated copy of this order, duly issued by the Registry.

(RAVINDRA V. GHUGE,J.)