

3 On 24th February 2012, this Court had directed that the application be decided at the time of final hearing and disposal of the appeal by holding that the appeal itself is ready for final hearing. Thus with a hope that the appeal would be taken up for final hearing in near future, the order dated 24th February 2012 has been passed.

4 Heard the learned Advocate appearing for the first informant. He argued that considering the pendency of jail appeals before this Court, there is no possibility that the Criminal Appeal bearing No.706 of 2003 in which accused persons are on bail, will be heard and decided in near future. He, therefore, pressed the criminal application and argued that the learned trial Court while deciding the Sessions Case has directed return of the property to the applicant/first informant from whom it came to be robbed by accused persons out of which two are convicted by the trial Court.

5 I have also heard the learned Additional Public Prosecutor. He argued that suitable order may be passed.

6 Clause (8) of the operative portion of the Judgment and Order dated 16th January 2013 passed by the learned Additional Sessions Judge, Greater Bombay, Mumbai in Sessions Case No.699 of 1998 reads thus :

(8) Muddemal property i.e. three gold lagads weighing i.e. 150 grams (Art.No.8), 140 grams (Art.No.10), and 100 grams (Art.No.11), be given tot he complainant Chandrakant Sheth after appeal period is over, in case, no appeal is preferred.

7 According to the prosecution case, the applicant/first informant Chandrakant Sheth, is owner of jewellery shop named Ganesh Jewellers. On 17/08/1997 after closing the shop at night, he along with his servant were returning to the house carrying with them a bag containing gold ornaments, cash and diamonds. At that time, two persons intercepted them while armed with deadly weapon such as revolver and chopper. They snatched the bag from the first informant and flee from the spot. In this matter, the applicant/first informant is stated to have been robbed of cash and valuable worth Rs.13,45,000/-. It is the case of the prosecution as seen from the Judgment and Order passed by the learned Additional Sessions Judge that subsequently accused No.3 Sallauddin sold robbed gold ornaments after melting and converting them into gold bars to P.W.No.2 Modilal Singhvi and P.W.No.8 Omprakash Soni. During investigation, those three gold bars came to be recovered and seized from P.W.No.2 Modilal Singhvi and P.W.No.8 Omprakash Soni. After due trial, the learned trial Court convicted accused No.1 Nagraj and accused No.3 Sallauddin. Order regarding disposal of seized property

came to be passed while disposing of the sessions Case and three gold bars weighing 150 grams 140 grams and 100 grams are directed to be returned to first informant Chandrakant Sheth i.e. the present applicant.

8 It is thus clear that the learned trial Court has come to the conclusion that the seized gold bars constitute the property robbed from first informant/applicant Chandrakant Sheth and, therefore, it is directed that those three gold bars be handed over to first informant/applicant Chandrakant Sheth.

9 The property claimed is a valuable property in the form of gold. It is not proper to keep it in the Malkhana with all threats to its safe custody. The applicant/first informant appears to be rightful claimant of the seized property as the learned trial Court has directed to hand over the said property to him. It does not appear that either accused persons or anybody else had claimed that property. In this view of the matter, the following order :

- (i) Seized muddemal property as described in clause No.8 of the operative order passed by the learned additional Sessions Judge in Session Case No.699 of 1998 viz three gold bars weighing 150 grams 140 grams and 100 grams be made over to the applicant/first informant subject to decision of the appeal and on furnishing security tot he

satisfaction of the Registrar of the City Civil and Sessions Court, Greater Bombay, Mumbai.

- (ii) In the event of reversal of the impugned Judgment and Order passed by the learned Additional Session Judge, Greater Bombay, Mumbai, the appellant should return the property, if so directed.

10 The application is disposed of accordingly.

(A.M.BADAR J.)