

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.583 OF 2016

Seema Hariom Sharma ... **Applicant**

V/s.

The State of Maharashtra & Anr. ... Respondents

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Mr.Bhavesh M. Thakur, Advocate for the Applicant.

Mr.A.R.Kapadnis, APP for the Respondent/State.

Mr.H.S.Venegaonkar, Advocate for the Respondent No.2/CBI.

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CORAM : A.M.BADAR J.

DATED : 24th APRIL 2017.

P.C. :

1 Heard.

2 Admit.

3 Heard finally by consent of parties.

4 By this revision petition, the revision petitioner is challenging the order dated 18/07/2016 passed by the Special Judge (CBI), Mumbai below Exhibit 4 thereby rejecting her application under Section 451 of the Code of Criminal Procedure for return of valuable property pending the trial. In addition, in the instant revision petition, the revision petitioner is praying for

de-freezing the locker maintained by her with the Bank of Baroda Rohini, New Delhi.

5 Heard the learned Advocates appearing for the revision petitioner as well as for the CBI. It is argued by the learned Advocate for the revision petitioner that the trial against husband of the revision petitioner will take its own time and till then valuable property seized from the house which comprises of her *stridhan* needs to be released in her favour. The learned Advocate argued that the Court below erred in rejecting her application at Exhibit 4 with a reasoning that investigation is in progress to ascertain possession of disproportionate assets by the accused, who is husband of the applicant. This cannot be a reason for rejecting the application.

6 The learned Advocate for the CBI contended that search of the house of the revision petitioner which she used to be shared with her husband was undertaken and by panchanama dated 20/03/2015 several articles including golden jewellery weighing 228 grams. two sliver chips weighing 110 grams are seized and those are subject matter of the trial.

7 It is seen from the impugned order that husband of the present revision petitioner is being prosecuted for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2)

of the Prevention of Corruption Act, 1988 in a trap case. Thus the charge against husband of the revision petitioner is demanding and accepting illegal gratification, so also the criminal misconduct. It is not seen from the record that husband of the present revision petitioner is being prosecuted for amassing assets disproportionate to his known source of income. In this view of the matter, seized gold jewellery and silver chips cannot form muddemal in the charge-sheet for the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. In the matter of ***Sunderbhai Ambalal Desai & C.M.Mudaliar v. State of Gujarat*** reported in AIR 2003 SC 638, the Honourable Apex Court has held that valuable articles and cash need to be returned to the claimant instead of keeping it in police custody for years together till the trial is over.

8 In this view of the matter, gold jewellery and silver ships cannot be permitted to be retained in custody of the investigator till disposal of the trial when the same came to be seized from the house in occupation of the revision petitioner, in the light of charge levelled against her husband.

9 The revision petitioner has also prayed for de-freezing the locker maintained by her at Bank of Baroda, New Delhi. This relief does not come within the scope of revisional jurisdiction of this Court as no such relief ever claimed before the Court blow.

Therefore, the order :

- (i) The revision petition is partly allowed.
- (ii) The impugned order dated 18/07/2016 passed by the learned Special Judge (CBI) Mumbai below Exhibit 4 in Special Case No.105 of 2015 is quashed and set aside.
- (iii) The application filed by revision petitioner for return of property viz. Gold jewellery weighing 228 grams and silver chips weighing 110 grams is allowed.
- (iv) The revision petitioner should execute bond to the satisfaction of the trial Court to the effect that she will not dispose of the property during pendency of the trial and she will produce the same if required and ordered by the learned Special Judge (CBI), Mumbai.

10 With this, the revision petition stands disposed of.

(A.M.BADAR J.)