

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No. 488 of 2019**

Dhiraj Kansari, son of Vijay Kumar Kansari, aged about 44 years, Occupation – Jewellers Business, R/o Plot No. 207, Hatri Chowk, Pussore, District Raigarh (C.G.)

-----Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Home Department, Mahanadi Bhawan, New Raipur (C.G.)

2. Station House Officer, Saria, Tehsil Baramkela, District Raigarh (C.G.)

3. S.K. Mofuruddin son of S.K. Anuvaruddin, aged about 34 years, resident of village Deodanga, West Bengal, presently residing at college Road Mahantipara, House of Ajay Verma, P.S. Bargad, District Bargad (Odisha)

4. S.K. Hakimuddin, son of Shri S.K. Ajjimuddin, aged about 21 years, resident of village Jainagar, P.S. Jhargram (West Bengal), Presently residing at college Road, Mahantipara House of Ajay Verma, P.S. Bargad, District Bargad (Odisha)

----- Respondents

For Petitioner : Mr. Ashutosh Shukla, Advocate.
 For Respondents No. 1 & 2 : Mr. Ravi Kumar Bhagat, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/02/2020

(1) This petition is directed against the impugned order dated 25.06.2019 passed by Additional Sessions Judge, Sarangarh, District Raigarh in Criminal Revision No. 14/2019 whereby learned Revisional Court has affirmed the order passed by the trial Magistrate rejecting the petitioner's application under Section 457 of the Code of Criminal

Procedure, 1973 for interim custody of the gold ornaments.

(2) Learned counsel appearing for the petitioner would submit that gold ornaments were seized from the possession of respondents No. 3 & 4/accused persons and Istgasa No. 1/2019 has been registered against them and, thereafter, they were arrested for the commission of offence under Section 41(1-4) of Cr.P.C. and Sections 379 read with Section 34 of IPC on 27.03.2019. He submits that petitioner is the owner of M/s Aishwarya Jewelers Shop at Pussore, Raigarh, who used to purchase the gold ornaments from M/s Biju Jewelers Orrisa Wholesale dealers to sell those gold ornaments in his jewelery shop and at the time of their arrest, that gold ornaments were being brought by the said accused persons/respondents No. 3 & 4 to his shop at Pussore, as such, he is entitled for the custody of the said ornaments but the trial Magistrate as well as Revisional Court has rejected the petitioner's application under Section 457 of the Cr.P.C. for interim custody of the said gold ornaments by recording a finding, which is perverse and contrary to the record and the judgment rendered by the Supreme Court in the matter of **Sunderbhai Ambalal Desai Vs. State of Gujarat**¹ with regard to interim custody of valuable articles and currency notes etc. has not been considered while deciding the petitioner's application for interim custody of the gold ornaments.

(3) On the other hand, counsel for the State would support the impugned order.

¹ (2002) 10 SCC 283

(4) I have heard learned counsel appearing for the parties and perused the impugned order.

(5) The Supreme Court in the matter of **Sunderbhai Ambalal Desai** (Supra) with regard to interim custody of valuable articles and currency notes, etc. has held as under :-

"10. To avoid such a situation, in our view, powers under Section 451 CrPC should be exercised promptly and at the earliest.

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."

(6) A careful perusal of the impugned order would show that both the courts below have not noticed the decision rendered by the Supreme Court in the matter of **Sunderbhai Amalal Desai** (supra) while deciding the petitioner's application for

interim custody of gold ornaments and rejected the said application.

(7) In view of above, the impugned order passed by the trial Magistrate as affirmed by the Revisional Court is set aside. The matter is restored to the file of trial Magistrate, who will consider and decide the petitioner's application afresh for interim custody of the gold ornaments in light of decision rendered by the Supreme Court in the matter of **Sunderbhai Ambalal Desai** (supra) expeditiously preferably within a period of 10 days from the date of production of certified copy of this order.

(8) The writ petition (Cr.) is partly allowed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-