

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P.No.152 of 2016**

Vardhman Jewelers Korba, Prop. Dharmendra Jain S/o Shri Ranulal Jain Vardhaman Jewelers R/o Main Road Korba, Thana Kotwali, Korba, District Korba (CG)

---Applicant**Versus**

State of Chhattisgarh Through Police Station Korba, Tahsil & District Korba (CG)

---Respondent

For Applicant	:	Mr.Shiv Narayan Shrivastava, Advocate
For Respondent	:	Ms Veena Nair, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

12/06/2020

1. Proceedings of this matter have been taken up through video conferencing from High Court Premises at Bodri, Bilaspur.
2. By the impugned order, the applicant's application for interim custody of jewellery seized in connection with crime in question has been rejected by the trial Court and affirmed by the revisional Court.
3. Learned counsel for the applicant would submit that while rejecting the application the principle of law laid down by the Supreme Court in the matter of **Sunderbhai Ambalal Desai v. State of Gujarat**¹ has not been followed.
4. On the other hand, learned Deputy Advocate General for the respondent/State would support the impugned order.

¹ 2002(10) SCC 283

5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
6. 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.
7. The Supreme Court in the matter of **Sunderbhai Ambalal Desai** (supra) has held that 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 CrPC at the earliest.

12. For this purposes, 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 panchanama 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 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs or 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 CrPC 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.”

8. It appears that the principle of law laid down in Sunderbhai Ambalal Desai (supra) has not been considered by the trial Court and rejected the application, which has been affirmed by the revisional Court.
9. In view of above, the impugned order dated 28.8.2015 passed by the Second Additional Sessions Judge, Korba in Criminal Revision No.54/2015 and the order dated 14.7.2015 passed by the Judicial Magistrate First Class, Korba in Criminal Case No.633/2015 are hereby set aside. The matter is remitted to the trial Court to consider and dispose of the application keeping in view the principle of law laid down by the Supreme Court in Sunderbhai Ambalal Desai (supra) expeditiously.
10. The CrMP is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-