

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 2197 of 2019**

Sushil Kumar @ Bunti, S/o Late Shri Hetram, aged about 56 years, Caste Agrawal, R/o Baradwar, Police Station – Baradwar, District Janjgir-Champa (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through SHO, Police Station Baradwar, District Janjgir-Champa (C.G.)

2. Shailesh Kumar Rai @ Mintu, S/o Parmhasan Rai, aged about 47 years, R/o Sherpur, P.S. - Bhabarkol, District – Gazipur, (U.P.)

----Respondent

For Petitioner	: Mr. Amit Soni, Advocate.
For Respondent /State	: Mr. Mateen Siddiqui, Dy. Advocate General.

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) The petitioner's application for grant of interim custody of his seized mobile has been rejected by learned trial Magistrate as well as by the revisional Court, against which instant petition under Section 482 of the Code of Criminal Procedure, 1973 (henceforth "Code") has been preferred.

(3) Learned counsel for the petitioner would submits that the petitioner's application for grant of interim custody of his seized mobile has not been considered and decided by the trial Magistrate as well as by the Revisional Court in

light of the principles of law laid down by the Supreme Court in the matter of **Sunderbhai Ambalal Desai v. State of Gujarat**¹.

(4) Per contra, Mr. Mateen Siddiqui, learned State counsel would support the impugned order and oppose the aforesaid submission made by learned counsel for the petitioner.

(5) I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

(6) The trial Magistrate by its order dated 05.07.2019 rejected the petitioner's application for grant of interim custody of his seized mobile holding that since the seized mobile is involved in the alleged offence, therefore, interim custody of the said mobile cannot be granted, and which has been affirmed by the revisional Court by the impugned order dated 31.07.2019.

(7) The Supreme Court, in the matter of **Sunderbhai Ambalal Desai** (supra), has emphasized the need for expeditious disposal of the application for the property seized in commission of an offence. In paragraphs 11 to 14, their Lordships, with regard to the custody of valuable articles and currency notes, have held 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, 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

1 (2002) 10 SCC 283

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 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 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 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. ”

(8) It appears that the petitioner's application for grant of interim custody of the seized mobile has not been considered and decided by the trial Court as well as by the revisional Court in view of the law laid down by the Supreme Court in **Sunderbhai Ambalal Desai** (supra).

(9) Accordingly, the impugned order passed by the revisional Court as well as the order passed by the Judicial Magistrate are hereby set aside and the matter is remitted to learned Judicial Magistrate to consider and decide the same afresh expeditiously preferably within a period of two months from the date of receipt of certified copy of this order in view of the law laid down by the Supreme Court in

Sunderbhai Ambalal Desai (supra).

(10) Consequently, the Cr.M.P. is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

