

NSC.

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.5062 OF 2019

Brink's India Pvt. Ltd.

Through its authorized signatory

Mrs. Mita Ghotgalkar

...Petitioner

Versus

1. The State of Maharashtra

2. MMTC-Pamp India Pvt Ltd.

...Respondents

Mr. Deepak Sharma, i/b DMS Legal, for the Petitioner.

Ms. S.V. Sonawane, A.P.P for the Respondent No.1 - State.

Mr. Vikas S. Salvi i/b Vikas Salvi and Associates, for the Respondent No.2.

PSI – Pallavi Jadhav, L.T.Marg Police Station, Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATE : 9th DECEMBER, 2020

P.C. :

1. Heard learned counsel for the parties.

2. By this petition, the petitioner has impugned the order dated 6th August, 2019, passed by the learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai, on an application preferred by the petitioner seeking return of the property i.e. 13 kgs of gold worth Rs.4,35,00,000/- seized/recovered by the police from the accused in C.R. No.191 of 2019

registered with the L.T. Marg Police Station, Mumbai.

3. Learned Counsel for the petitioner submits that the order dated 6th August, 2019, passed by the learned Magistrate, is harsh and unreasonable, inasmuch as, the gold in question admittedly belongs to the petitioner. He submits that although the learned Magistrate has released/returned the gold to the petitioner vide order dated 6th August, 2019, the terms and conditions on which the same is returned are untenable, inasmuch as, they are unreasonable and harsh. Learned Counsel relied on the order dated 21st November, 2013, passed by this Court (Coram: M. L. Tahaliyani, J.) in Criminal Application No.1040 of 2013. He submits that there is a panchanama dated 30th June 2019, with respect to the recovery of gold bars by the police from the accused. He submits that 130 gold bars have been recovered by the police from the accused, out of 200 gold bars. He further submits that the petitioner is ready to give an indemnity bond in the trial Court that if at the conclusion of the trial it is found that the petitioner is not entitled to possess the property in question, he will indemnify the State of Maharashtra to the tune of Rs.4,35,00,000/-, which is the value of the gold bars i.e. 130 gold bars recovered from the accused.

4. Learned APP states on instructions that they have no objection if the gold bars are returned to the petitioner i.e. to the authorized representative of the petitioner. She, however, submits that before the said gold bars are returned, a government approved valuer be permitted to evaluate the quality and purity of the gold bars i.e. 130 gold bars. She further submits that the police will take necessary photographs and videography of the said gold bars in the presence of the petitioner's authorized representative and their lawyers, as well as in the presence of respondent No.2 and their advocate, as the case may be, before the said articles are returned to the petitioner.

5. Perused the papers. The petitioner – company is dealing in the business of providing secured logistics towards transportation of precious metal and storage and collection of the cash from the banks and loading of cash in the ATM machine. It appears that on 19th June, 2019, one of the loaders on the vehicle transporting precious metal robbed 20 kgs of gold belonging to the one of the petitioner's client i.e. MMTC-Pamp India Pvt. Ltd. i.e. Respondent No.2. Pursuant thereto, the employee of the petitioner-company registered an offence with the L.T. Marg Police Station, Mumbai. During investigation, police arrested the accused and seized 13 kgs of gold out of the stolen 20 kgs of gold. After investigation,

charge-sheet was filed as against the accused. Pursuant thereto, the petitioner filed an application through its authorized officer for return of the property i.e. 13 kgs of gold worth Rs.4,35,00,000/- on supratnama. The accused gave his no objection for return of the said property, stating that he has nothing to do with the property in question. MMTC-Pamp India Pvt. Ltd. i.e. Respondent No.2 to whom the gold belonged also gave its no objection. The learned Magistrate after hearing the parties allowed the application, on following terms and conditions:-

“Order

1. *The seized 13 kgs gold worth Rs.4,35,00,000/- be released in favour of the applicant Mrs. Mita Ghotgalkar on executing her supurtnama indemnity bond of Rs.4,35,00,000/- before court on the following conditions namely:*
 - a) *Applicant shall not alienate, transfer, gift, sale the said 13 kgs gold.*
 - b) *She shall not change the nature of the gold.*
 - c) *She shall produce the said 13 kgs gold before the court as and when required.*
 - d) *She shall furnish her residential as well as business address along-with documents.*
2. *Applicant shall furnish bank guarantee of nationalized bank for amount of Rs.4,35,00,000/- on record.*
3. *Investigating officer is directed to weigh and take authenticity certificate from a registered jeweller, colour photographs of the gold and to prepare panchanama of handing over the gold to the applicant. He is further directed to attach the certificate, photographs and panchnama to the charge-sheet.”*

6. As far as the condition imposed by the learned Magistrate directing the petitioner to give bank guarantee for the amount of Rs.4,35,00,000/- is concerned, same in the facts is onerous, inasmuch as, the object is to secure the gold. The accused has specifically stated that he has nothing to do with the gold and has given his no objection for return of the same. The respondent No.2 i.e. MMTC-Pamp India Pvt. Ltd. to whom the gold belonged also has no objection to return of the gold and has no objection to modification of the conditions. The police have also under a panchanama given the details of the gold bars which were seized/recovered by them from the accused.

7. In the facts, considering the aforesaid, the order dated 6th August, 2019, passed by the learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai, is modified and the following order is passed:-

ORDER

i) The said gold which is seized shall be returned to the petitioner through its authorized representative, after taking photographs and videography of all the gold bars i.e. 130 gold bars, in the presence of the petitioner's authorized representative, respondent No.2's authorized representative and their lawyers. The signature of all the parties i.e. the petitioner and the respondent No.2's authorized representatives, concerned officer shall be taken on the list of articles prepared/panchanama;

- ii) The concerned officer is directed to weigh and take authenticity certificate from a government registered jeweller/valuer, and take coloured photographs of the gold and prepare panchanama of handing over the gold to the petitioner. He is further directed to submit the certificate, photographs, videography and panchnama to the trial Court.
- iii) The concerned officer of the L.T. Marg Police Station, Mumbai, shall after drawing the panchanama, submit the same in the trial Court;
- iv) Before the release of the gold bars, the petitioner shall give an indemnity bond to the Court that in the event it is found that the petitioner is not entitled to possess the property in question, he shall indemnify the State of Maharashtra to the tune of Rs.4,35,00,000/-;
- v) The petitioner shall not alienate, transfer, gift, sell or change the nature of the said 130 gold bars. However, in the event, the petitioner intends to alienate, transfer, gift, sell the said gold bars, liberty is granted to the petitioner to file an appropriate application in the trial Court.

8. Petition is accordingly disposed of on the aforesaid terms.

9. All concerned to act on the copy of this order, digitally signed by the Private Secretary of this Court.

REVATI MOHITE DERE, J.