

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 134 of 2021**

Rakesh Nahta, S/o Shri R.C. Nahta, Aged about 39 years, R/o C-2/19 to 07, New Rajendra Nagar, Raipur, Chhattisgarh.

---Petitioner

Versus

State of Chhattisgarh, Through the District Magistrate, Raipur, Chhattisgarh.

--- Respondent

For Petitioner :- Mr. Vivek Chopda, Advocate

For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

25/02/2021

1. Petitioner herein filed an application under Section 451 of CrPC for interim custody of gold ornaments seized during the investigation of crime No. 100/2020 registered at Police Station New Rajendra Nagar, Raipur for offence punishable under Section 420 of IPC. The said application stood rejected by the trial Magistrate by order dated 28/11/2020, which was also affirmed by the revisional Court by impugned order dated 13/01/2021 against which

the instant petition under Section 482 of CrPC has been preferred.

2. Mr. Vivek Chopda, learned counsel for the petitioner, would submit that while deciding the application of the petitioner, the principle of law laid down by the Supreme Court in the matter of Sunderbhai Ambalal Desai v. State of Gujarat¹ has not been considered and it has been ignored very lightly, especially paragraph 11 of the report which deals with valuable articles and currency notes, therefore, the order passed by the trial Magistrate as well as by the revisional Court is liable to be set aside.

3. On the other hand, Mr. Ravi Bhagat, learned State counsel would oppose the submission made by learned counsel for the petitioner and submits that the present petition deserves to be dismissed.

4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

5. It is correct to say that detailed directions have been issued by Their Lordships of the

¹ (2002) 10 SCC 283

Supreme Court in the matter of Sunderbhai Ambalal Desai (supra) qua interim custody of the property during the pendency of the investigation/trial and it has been held as under with regard to the gold ornaments and valuable articles :-

"Valuable Articles and Currency Notes

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 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. From a careful perusal of the record, it appears that the aforesaid principle of law laid down by Their Lordships of the Supreme Court in the matter of Sunderbhai Ambalal Desai (supra) has simply been ignored and not been noticed and

considered by the revisional Court while deciding petitioner's application for grant of interim custody of his seized articles. Consequently, the order passed by the trial Magistrate as well as by the revisional Court are hereby set aside and matter is remitted to the revisional Court to consider it afresh within 30 days from the date of appearance of the parties in accordance with the decision rendered by the Supreme Court in Sunderbhai Ambalal Desai (supra).

7. With the aforesaid observation/direction, the present petition stands disposed of. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet