

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

943 CRIMINAL WRIT PETITION NO.1851 OF 2019

NINAD SHIVAJIRAO PATIL

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr.Ravindra Narvade Patil, Advocate for the
petitioner

Mr.K.S. Patil, APP for the respondent/State.

...

CORAM : RAVINDRA V.GHUGE

AND

B.U.DEBADWAR, JJ.

DATE : 8th APRIL, 2021

PER COURT :-

1. By this Petition, the petitioner has
put-forth prayer clauses "b" and "c", as
under :-

"b. Writ of mandamus or any other
appropriate Writ, order or direction
be issued against the Respondents
directing the Investigation and
Investigation Papers in Crime
No.0056/2019 dated 08.02.2019
registered with Respondent No.2 be
ordered to be transferred with
Respondent No.1 for Investigation and
the Respondent No.1 be ordered and
directed to file requisite Charge
Sheet/ Final Report with Competent
Court at Nasik upon complication of
Investigation and for that purpose
issue necessary orders.

c. Pending the hearing and final disposal of the Criminal writ petition further proceedings in F.I.R. bearing Crime No. 0056 registered on 08/02/2019 for the offence punishable U/sec. 410, 411, 414, 34 of the Indian Penal Code and Section 124 of Bombay Police Act, 1951 and U/section 5, 31 of the Gold Control Act, 1965 be stayed only to the extent of filing of Charge Sheet."

2. This Court (Coram : T.V. Nalawade & M.G. Sewlikar, JJ) had passed an order on 02.02.2021, which reads as under :-

"This Court is issuing notice to State only to ascertain as to whether some false record is created by the petitioner to substantiate his claim. Learned APP waives service of notice for respondent Nos.1 and 2. Learned APP to take written report of the police in respect of the said matter which was filed against the person or who was found in possession of unaccounted gold. In ordinary course the statement of this man, petitioner must have been recorded in that case also. Entire record is to be shown to this Court. This court has expressed in the present matter that there is possibility of creation of false record and some mischief from the side of present petitioner. From that angle police need to make enquiry and make submissions before this Court. Keep on 16/03/2021."

3. Pursuant thereto, we had passed an order on 16.03.2021. The I.O. had deposited an amount of Rs.10,000/- in this Court, considering our directions set out in paragraph no.5 of our subsequent order dated 22.03.2021.

4. We have perused the affidavit in reply filed by ShriGovardhan Iranna Bhume, Police Inspector, Police Station, Selu, and we find from the said affidavit as under :-

a) The petitioner is a complainant in a similar type of offence, which is committed in the jurisdiction of Sarkarwada Police Station, Nashik, bearing Crime No.91/2019, which was registered on 13.02.2019 under section 381 of the IPC. The accused is Akash Bandu Mhaske.

b) The father of accused Akash, namely, Bandu Mhaske, was working as a servant with the present petitioner Ninad Shivaji Patil.

c) 5 gold biscuits, each weighing 10 tolas (100 grms), a total of 500 grams, were allegedly stolen by Akas

and the said matter is subjudice before the competent Court at Nashik. Pursuant to which, the charge-sheet is filed on 08.11.2019.

d) Anil Hingolie, B.No.817 of Local Crime Branch, Parbhani has registered an offence on 08.02.2019.

e) Four persons mentioned in paragraph No.5 of the affidavit were intercepted by the Local Crime Branch.

f) The informant in this FIR has stated that from his source, he came to know that one Gautam Ingle, Gayatrinagar, Selu, who is not a Gold Merchant, was selling the gold biscuits to one Vitthal Bahiwal.

g) On the basis of secrete information, the Local Crime Branch, Parbhani found out the stolen gold, which was about 28 tolas (280 grams).

h) A Crime No.56/2019 was registered and the said four persons were made accused. A charge-sheet has been filed in the Court of the learned Judicial Magistrate, First Class, Selu.

i) On investigation of Local Crime

Branch, it was revealed that the stolen gold belonged to the wife of the present petitioner. The present petitioner is connected with Crime No.56/2019, since the gold that was recovered, belonged to his wife.

j) During interrogation of the accused in Crime No.56/2019, it was revealed that some of the accused had also stolen gold in Crime No.91/2019, in which Akash Bandu Mhaske was involved, as he had stolen the gold.

k) The learned J.M.F.C. Selu, by order dated 07.12.2020, passed in Criminal Application No.98/2019, gave interim custody of 280 grams of gold and cash of Rs.10,000/- in Crime No.56/2019, to the present petitioner Ninad Shivajirao Patil.

l) Supurtnama dated 07.12.2020 was executed by the present petitioner, along with his wife, to receive the gold.

m) Though, the learned J.M.F.C. Selu did not ask for the purchase receipts of the gold biscuits from the petitioner, a Notarized will deed dated 07.02.2017 executed by the

mother of the petitioner's wife, indicates that she had willed that the gold be given to the petitioner's wife.

5. Considering the above, we are of the view that the conclusions as regards, who is owner of 280 grams of gold, would be decided by the concerned Court dealing with Crime No.56/2019. We are, therefore, not going into the said issue, as the matter is subjudice before the competent Court in Regular Criminal Case No.127/2019, in which the next date of hearing is 23.04.2021.

6. In so far as, the request of the petitioner in this Petition to transfer Regular Criminal Case No.127/2019 to a Competent Court at Nashik is concerned, we do not find it appropriate to accept the said request to the extent of the ground that the petitioner is heart patient. We have perused the medical papers produced by the petitioner and we have gone through the medical report set out in the Discharge Summary of Chopda Medicare and Research Centre Pvt. Ltd., Nashik that the petitioner had suffered a single block in the LAD. The block was approximately at about 80%. By performing an

Angioplasty, a stent has been installed at the place of the block and the obstruction has been removed.

7. Though, we are not entertaining this Petition on the health ground of the petitioner, we find that the petitioner has brought before us peculiar facts, which are likely to affect the case in Crime No.91/2019, registered at Sarkarwadi Police Station, Nashik and in Crime No.56/2019 i.e. registered with Police Station, Selu. The connection in these two matters is that the alleged gold thief Akash at Nashik is accused in Crime No.91/2019. He originally hails from Selu. It appears that he parted with the stolen gold to the four accused, who were apprehended in Crime No.56/2019.

8. As such, the case at Nashik would deal with whether Akash had stolen the five biscuits of gold belonging to the wife of the petitioner. The ownership of the petitioner's wife through inheritance by the will deed of her mother, will have to be considered in the said case. This gold is said to have been parted by accused Akash to the four accused in Crime No.56/2019, who were apprehended dealing with stolen property when they were

attempting to sell the same.

9. In the light of the peculiar facts recorded as above, this petition is allowed. We deem it appropriate to transfer Regular Criminal Case No.127/2019, arising out of Crime No.56/2019, registered Police Station, Selu, from the Court of the learned Judicial Magistrate, First Class, Selu to the competent Court at Nashik, which is dealing with the case in Crime No.91/2019. Both these cases should, therefore, be tried by the same Court at Nashik, together.

10. Needless to state, the wife of the petitioner will have to prove that she has acquired the said gold from her mother by virtue of the Will Deed and in the event, it is established after trial that the said gold does not belong to the wife of the petitioner, which is presently in her custody, the said gold would be redeposited in the Court at Nashik, within one month from the date of the decision.

11. No order as to costs.

(B.U.DEBADWAR,J.)

SGA

(RAVINDRA V. GHUGE,J.)