

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.340 OF 2019

Saurab Ali s/o Amjad Ali Shaikh ... **APPLICANT**

VERSUS

The State of Maharashtra & ors. ... **RESPONDENTS**

.....
Mr. Abid Shaikh, Advocate holding for
Mr. K.N. Shaikh, Advocate for applicant
Mr. S.N. Kendre, A.P.P. for respondent No.1 – State
Mr. Krushna S. Solanke, Advocate for respondents No.2 to 6
(appointed)

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CORAM : R. G. AVACHAT, J.

Date of reserving order : 19th June, 2021

Date of pronouncing order : 3rd July, 2021

ORDER :

The challenge in this revision application is to the part of the order dated 4/11/2019, passed below Exh.1 in Criminal Misc. Application No.230/2019. By the impugned order, the prayer of the applicant for return of 8 tolas of gold and 1 Kg. of silver has been rejected.

2. Heard Mr. Shaikh, learned counsel for the applicant. Perused the impugned order and the related papers. The applicant is a goldsmith by profession. He runs a goldsmith shop at Ekta Nagar, Pathri. On 13/2/2019, the informant was on his way home after closing his shop. The informant had a bag with him. The bag contained gold ornaments of various descriptions, weighing 325 gms., silver ornaments of 8 kgs. and cash amount of Rs.90,200/-. The informant was riding motorbike and Shrikant was pillion rider. The bag containing gold and silver ornaments was with Shrikant. While they were passing from Zilla Parishad ground, a white car knocked them down from behind. 2 – 3 persons got down from the car and robbed the informant of his bag containing the aforesaid articles.

3. The crime was investigated. The MCOC Act came to be invoked. During investigation, gold and silver ornaments came to be seized. Some gold in the nature of ingots and silver came to be seized.

4. The applicant moved the application for custody of the seized gold and silver ornaments. The learned Special Judge for trial of offences under the MCOC Act, partly allowed the application. The applicant's prayer was rejected to the

extent of return of 8 tolas of gold and 1 Kg. of silver.

5. Before the Special Court, the prosecution gave no objection for return of the seized gold and silver. The accused objected only on the ground that the ornaments would be necessary before the Court during trial of the case. The learned Judge, in paragraph no.7 of the order, observed thus :-

“7. The accused persons are resisting the application on the ground that the articles be required at the time of trial. No doubt, during the trial for purpose of identification of the stolen articles there would be need of the seized article from the accused. However, considering the nature of the business of the applicant, it is not proper that till conclusion of trial those articles to be retained as obviously it will take time to conclude the trial. Therefore, by giving the direction to take the photographs of the articles in presence of pancha for purpose of identification a care can be taken of the objection of the accused persons. However, at the same time it is worth to note that applicant cannot be allowed for a custodial of melted (Vithallele) gold and silver ornaments.”

6. It appears that, the learned Judge did not give any reason as to why the 8 tolas of gold and 1 Kg. of silver has not been returned to the applicant. It is reiterated that, the prosecution had no objection to grant the prayer of the applicant in toto. The accused did not claim the seized gold

and silver. They only objected the application on the ground that the said ornaments are required during trial. It also appears that, no third person has come forward to claim the seized gold and silver. The applicant in his F.I.R. has given the details of the stolen gold and silver ornaments with weight thereof. The seizure of the gold and silver ornaments during investigation is not more than what has been quantified in the F.I.R. 8 tolas of gold and 1 Kg. of silver is in the form of ingots. The same would, therefore, not be necessary before the trial Court for its identification. The seized ornaments have been described in the seizure panchanama. Their photographs have also been taken. The F.I.R. also contains the description of the stolen ornaments. As such, the 8 tolas of gold and 1 Kg. of silver is not required to be kept with the Court for identification during trial. The same prima facie belongs to the applicant herein. Nobody has staked claim thereto. In the fitness of things, the Special Judge ought not to have refused to return the same to the applicant. Interference with the impugned order is, therefore, called for.

7. In the result, the applicant succeeds. The same is allowed in terms of prayer clause (C). The bond shall be executed before the Special Court. The conditions of the bond

shall be within the discretion of the Special Court.

8. Fees of learned counsel Mr. Krushna S. Solanke for respondents No.2 to 6 is quantified at Rs.2000/- (Rupees two thousand).

**(R. G. AVACHAT)
JUDGE**

fmp/-