

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 2217 OF 2021**

Vandana Rakhmaji Sakpal

... Petitioner

V/s.

The State of Maharashtra

... Respondent

Mr.Kuldeep Patil i/b. Ms.Saili Dhuru for Petitioner.

Mr.Amit Palkar, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.**DATE : 30th June 2021.****(Through Video Conferencing)****PC. :**

1. By the present Petition, the Petitioner (original complainant) has impugned Order dated 1st April 2021 passed below Exhibit-01 in Criminal M.A. No. 129 of 2021, by the learned Judicial Magistrate First Class (Court No.3), Vasai, thereby partly allowing her application for return of property filed under Section 457 of the Criminal Procedure Code.

2. Heard Mr.Patil, learned counsel for the Petitioner and Mr.Palkar, learned A.P.P. for the Respondent-State. Perused the record.

3. The Petitioner is informant in crime bearing C.R. No.725 of 2020 registered with Tulinj Police Station, District Palghar, for the offence punishable under Section 380 of the Indian Penal Code.

It is the case of the prosecution that, the gold ornaments of the informant were stolen by unknown person from her residential premises situated at Nalasopara (East). During the course of investigation, it was revealed to the police that, the grandson of Petitioner namely, Mr.Rishikesh Arvind Sakpal, had committed the said theft. The said stolen ornaments were recovered at the instance of the accused. From the stolen ornaments, the accused had melted some ornaments and an ingot weighing about 59 gms was made. As per the First Information Report 9 items of gold ornaments were stolen from the house of the Petitioner. The police recovered 7 items at the instance of the accused. Out of 7 articles, item No.1 is a ingot of gold weighing 59 gms, which was prepared by melting 3 different ornaments. The description of stolen ornaments and recovered ornaments is mentioned by the police in its report submitted to the Trial Court.

4. The record further indicates that, the Petitioner had earlier filed Criminal M.A. No. 629 of 2020, which was partly allowed by the Trial Court by its Order dated 8th October 2020 and 5 items were directed to be returned to the Petitioner.

The Petitioner feeling aggrieved by the said Order and non return of all the ornaments preferred Criminal M.A. No.61 of 2020 before the learned Additional Sessions Judge-I, Vasai. The learned Additional Sessions Judge by its Order dated 18th January 2021 passed below Exhibit-01 was

pleased to dismiss the said application, however granted liberty to the Petitioner to file application for delivery of the articles afresh, before the learned Judicial Magistrate First Class.

5. The Petitioner accordingly preferred the present application bearing Criminal M.A. No. 129 of 2021. The police submitted its report to the said application and have given its 'No Objection' for return of the said property.

6. As noted earlier, in its report the Police have stated about the 9 ornaments, which were stolen by the accused, and also the list of 7 articles which were recovered at the instance of the accused, which includes one gold ingot weighing about 59 gms. The Trial Court by its impugned Order while partly allowing the said application has directed to return only 2 articles to the Petitioner on certain conditions. The record further indicates that, the Trial Court in its impugned Order has observed that, the Petitioner has not produced any receipt of other articles and the receipts which are produced are in the name of Mr.Rakhmaji Sakpal and therefore, the Trial Court did not consider the prayer of the Petitioner to return rest of the articles.

7. It is to be noted here that, Mr.Rakhmaji Sakpal was husband of the Petitioner, who predeceased her and the ornaments in-question is the *stridhan* of the Petitioner and she was having exclusive ownership over it. The Police have also given 'No Objection' for return of the property involved in the

present crime, in possession of the Petitioner.

8. In view of the above, this Court finds that there is no impediment in returning the property involved in the present crime to the Petitioner (original complainant/informant) during the pendency of the trial.

9. The Investigating Officer of C.R. No.725 of 2020 registered with Tulinj Police Station, District Palghar, is hereby directed to return all the 7 items mentioned in its report of February 2021 (annexed at page Nos.31 and 32 to the present Petition) to the Petitioner on her furnishing Indemnity Bond of Rs.5,76,720/- before the Trial Court.

Condition Nos.2 (b) to (g) imposed by the Trial Court in its impugned Order dated 1st April 2021 are maintained.

10. Petition is allowed in the aforesaid terms.

[A.S. GADKARI, J.]