

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 2079 OF 2021**

Writer Business Services Pvt. Ltd.
Through Authorised Representative
Mr. Rohit Nandkumar Kale

... Petitioner.

V/s.

The State of Maharashtra and Ors.

... Respondents

Mr. Samsheer Garud a/w Smt. Juhi Valia i/b. M/s. Jaykar and Partners for the
Petitioner.

Mr. S. S. Hulke, A.P.P. for Respondent No.1-State.

CORAM : A.S. GADKARI, J.

DATE : 2nd July 2021.

(Through Video Conferencing)

PC. :

1. By the present Petition the Petitioner/original informant has impugned Orders dated 29th January 2021 passed below Exh.1 in O.M.A.No.911 of 2020, by the learned Judicial Magistrate First Class, Vasai, thereby rejecting the Application preferred by the Petitioner under Sections 451 and 457 of the Code of Criminal Procedure (for short, "*Cr.PC.*") for return of property and dated 26th April 2021 passed below Exh.1 in O.M.A. No. 254 of 2021, thereby again rejecting the Application filed by the Petitioner under Sections 451 and 457 of Cr.PC. for return of the same property i.e. cash amount of Rs. 4,22,20,100/-.

2. Heard Mr. Garud, learned counsel for the Petitioner and Mr. Hulke, learned A.P.P. for the Respondent No.1-State. Perused record annexed to the Petition.

3. As noted in the earlier Order dated 28th June 2021, the Respondent Nos.2 to 4 (original accused persons) have been duly informed by the concerned Police Officer about filing of the present Petition and its scheduled date of hearing, however none appeared for them.

4. The record indicates that, Shri Rohit N. Kale, Authorized Representative of the Petitioner, has lodged crime bearing C.R. No.0364, dated 12th November 2020 with Arnala Sagari Police Station, District Palghar, for the offence punishable under Section 381 of the Indian Penal Code (for short, "*IPC*"). That, during the course of investigation Sections 120-B and 34 of the IPC have been subsequently added to the said crime.

The prosecution case in nutshell is that, the Petitioner is a private limited company having its business of Cash Management Services for its various clients and they are in business of daily cash replenishment of money in various ATMs spread all over India. The petitioner is having agreements with various Managed Service Providers (MSPs) and with their coordination, Petitioner collect cash from various banks of the MSPs as per their requirement and deposit it in the ATMs as is directed. The Respondent No.2 Rohit Aaru was employed as a driver of the Petitioner company's vehicle. The

said accused was tasked with transporting cash to approximately 54 banks ATMs on Virar route. That, on 12th November 2020, at about 5.30 pm, the said vehicle was carrying about Rs.4.53 crores and was also accompanied by guard, namely, Shri Manoj Pandey. At that relevant time, accused Rohit Aaru (driver/Respondent No.2) halted the said van outside an ATM KIOSK at Bolinj, Virar (West) and an amount of Rs.28 lakhs was taken by the cash loader guard for loading in Kotak Mahindra Bank ATM and two other ATMs. The two custodians of the cash along with an armed security guard alighted from the van with a trunk containing the said cash. While the said three persons were busy in loading the said cash in the ATM, the driver (Rohit Aaru) drove off with the cash van containing Rs.4.25 crore.

During the course of investigation, the said cash was recovered from the house of Respondent No.3 Chandrakant @ Babusha Gulab Gaikwad and from other accused. After completion of the investigation, the police have submitted charge-sheet.

5. The record further indicates that, on 1st December 2020, the Petitioner company through its Authorised Officer Mr. Amit Theng filed an Application bearing No.911 of 2020 under Section 451 and 457 of Cr.P.C. for release and disposal of the cash amount of Rs.4,22,20,100/-. The Investigating Officer submitted its say dated 18th December 2020 and gave its no objection to return the said property (cash) in favour of the Petitioner on

certain conditions. The learned Judicial Magistrate First Class, Vasai, by its impugned Order dated 29th January 2021 was pleased to reject the said Application on the ground that the said Application was filed by Mr. Amit Theng and not by the first informant Mr. Rohit Kale. The Trial Court had expressed surprise about non filing of the said Application by the original complainant and proceeded to reject the said Application.

6. The Petitioner thereafter again filed Miscellaneous Application No. 254 of 2021 under Section 451 and 457 of Cr.P.C. on 1st March 2021 for release and return of the said recovered cash amount through its authorised representative Mr. Rohit Kale (informant). It is to be noted here that, in the said Application in para no. 8, the Petitioner had made a categorical statement that, he had earlier filed Miscellaneous Application No. 911 of 2020 before the same Court through its Authorised Officer Mr. Amit Arun Theng and the said Application was rejected by an Order dated 29th January 2021.

It is to be noted here that, to the said Miscellaneous Application No. 254 of 2021, the Investigating Officer has filed his say dated 12th March 2021 and has given his no objection to return the said property to the Petitioner, with certain conditions. The Trial Court by its Order dated 26th April 2021 has rejected the said Application predominantly on the ground that, the Applicant/Petitioner without assailing the Order of rejection of interim custody of cash amount has filed the second Application. That, the

Petitioner has not mentioned in his Application about the fact of rejection of the previous Application for interim custody and suppressed the said material fact of the Court.

7. As noted earlier, in its Miscellaneous Application No.254 of 2021, in para No.8, the Petitioner has categorically stated that, its earlier Miscellaneous Application No.911 of 2020 filed before the same Court through its Authorised Officer Mr. Amit Arun Theng was rejected by an Order dated 29th January 2021. Therefore, the observations of the Trial Court in its impugned Order dated 26th April 2021 in that behalf are erroneous.

8. The record reveals that, it is an admitted fact on record that, the said cash recovered by the police from the accused persons belongs to the Petitioner. The Investigating Officer has given its no objection for return of the said property to the Petitioner subject to condition that, the said amount may be kept as it is and be produced before the Court at the time of trial. The financial institutions who were having ultimate ownership on the said cash have given no objection for releasing the said cash in favour of the Petitioner. The said no objection certificates are annexed at page nos.83 to 89 to the present Petition. Even otherwise, the said cash amount is public money and keeping it idle in the custody of police is of no avail, as its ultimate beneficiary are the people i.e. account holders of the financial institutions/banks.

9. The Hon'ble Supreme Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujarat*, reported in (2002) 10 Supreme Court Cases 283, in para No. 7, 10, 12, 13 & 14 has held as under :-

“7. In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

“10. To avoid such a situation, in our view, powers under Section 451 Cr.P.C. should be exercised promptly and at the earliest.

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 Cr.PC. 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.

13. *For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr.PC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the Court under Section 451 Cr.PC. to impose any other appropriate condition.*

14. *In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the Court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in police custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the Court may direct that such articles be handed back to the Investigating Officer for further investigation and identification. However, in no set of circumstances, the Investigating Officer should keep*

such articles in custody for a longer period for the purposes of investigation and identification. For currency notes, similar procedure can be followed.”

10. In view of the above directions issued by the Hon'ble Supreme Court in the case of *Sunderbhai Ambalal Desai (supra)*, the said amount seized/recovered by the police from the respondent Nos.2 to 4 during the course of investigation can be returned to the Petitioner, subject to condition that the Petitioner at its own cost will take colour photographs of the said cash amount. A detailed description of the said cash amount is given in tabular form in para no.7 of the Application dated 1st March 2021 filed before the Trial Court (page nos.79 & 80 to the Petition). The said photographs of the cash amount will be produced before the Trial Court at the time of trial.

11. Hence, the following Order :-

- (i) The impugned Orders dated 29th January, 2021 passed below Exh.1 in O.M.A. No.911 of 2020 and 26th April 2021 passed below Exh.1 in O.M.A.No.254 of 2021 by the learned Judicial Magistrate First Class, Vasai are hereby quashed and set-aside.
- (ii) The Investigating Officer of C.R. No.I-364 of 2020, dated 12th November 2020 attached with Arnala Sagari Police Station, District Palghar, is hereby directed to return the said cash amount of Rs.4,22,20,100/- (detailed description of which is mentioned

in para No.7 of page No.79 of the present Petition) in favour of the Petitioner. The Petitioner shall submit an indemnity bond before the Trial Court stating therein that, in case, at the end of trial if the Trial Court directs, the Petitioner will bring back the said amount of Rs.4,22,20,100/- without any demur.

(iii) It is made clear that, it need not be the same currency notes which are being returned to the Petitioner by this Order to be brought back if directed by Trial Court as the currency notes involved in the present crime belongs to various financial institutions and after its return to the Petitioner, the said financial institutions will be utilizing it for the benefit of the bank account holders.

(iv) Petitioner shall take colour photographs of all currency notes and the copies of which will be submitted before the Trial Court as well as before the concerned police station where present crime is registered. Petitioner shall also retain one copy of colour photographs of all currency notes with it for the purpose of trial.

12. Petition is allowed in the aforesaid terms.

[A.S. GADKARI, J.]