

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 570 OF 2021

Sau. Nirupama w/o Rajendra Lad,
Aged 44 years, Occupation – Service,
R/o Behind Dr. Lande Hospital,
Near Vitthal Temple, Ambagate,
Amravati, Tq. and District - Amravati.

.... **APPLICANT**

VERSUS

1) State of Maharashtra,
through Police Station Officer,
Tq. Dharni, District – Amravati.

2) Rajendra s/o Bhauraoji Lad,
Aged 55 years, Occupation – Business,
R/o Behind Dr. Lande Hospital,
Near Vitthal Temple, Ambagate,
Amravati, Tq. and District Amravati.

.... **NON-APPLICANTS**

Mr. S.V. Sirpurkar, Counsel for the applicant,
Mrs. Kalyani Deshpande, Addl.PP for non-applicant 1/State,
None for respondent 2.

CORAM : ROHIT B. DEO, J.

DATED : 12th OCTOBER, 2021

ORAL JUDGMENT :

The husband of the applicant is one of the accused in Crime 6/2013 registered with Dharni Police Station, District-Amravati, for offences punishable under Sections 406, 417 and 420 read with Section

34 of the Indian Penal Code.

2. The prosecution case is that the applicant's husband was arrested on 29-4-2013 and on the basis of statement under Section 27 of the Indian Evidence Act, the Investigating Officer seized/recovered ornaments of Rs.12,85,573/- and cash of Rs.3,50,000/- from the applicant's locker.

3. The applicant preferred an application under Section 457 of the Criminal Procedure Code seeking release of the ornaments seized from her locker. This application came to be rejected by the learned Judicial Magistrate First Class, Dharni vide order dated 24-10-2018. Referring to the income tax returns produced by the applicant, the learned Magistrate observes that the income tax return for the assessment year 2009-2010 reflects gross annual income of Rs.1,75,000/- and the balance-sheet reflects investment of Rs.1,01,780/- in gold. The learned Magistrate then proceeds to scrutinize the income tax returns and documents and ultimately concludes that the gold ornaments worth Rs.8,90,000/- are shown to have purchased in the financial year ending 30-3-2011, which is in itself a suspicious circumstance considering that the applicant has no income other than the salary. The learned Magistrate further finds the purchase receipt produced on record by the

applicant suspicious.

4. Dissatisfied, the applicant preferred Criminal Revision 33/2019, which is rejected by the learned Additional Sessions Judge-1, Achalpur vide judgment dated 01-2-2021. The learned Additional Sessions Judge observes that till 31-3-2005 the investment in gold was worth Rs.41,260/- and the same suddenly increased to Rs.8,90,000/- for the year ending 31-3-2010. The learned Additional Sessions Judge notes that the receipts produced show purchase of ornaments from January 2010 to December 2010 and that such purchase worth Rs.8,20,302/- is not proportionate to the applicant's income. The learned Additional Sessions Judge inferred that the ornaments kept in the drawer of the applicant are proceeds of crime committed by her husband.

5. Even according to the prosecution, Crown Solar Power Fencing System Company applied for the work under the Special Assistance Scheme of the Central Government on 03-1-2011 and the sanction was accorded on 17-2-2011. The prosecution case is that since the said company did not report any progress, the agreement was cancelled vide letter dated 01-10-2012. The case of the prosecution is that it was on 04-6-2011 that co-accused Mahendra, Shrikant and Santosh deposited two demand drafts in the account of the said company which amount

was withdrawn by the husband of the applicant and one Shrikar Chilewani.

6. It would thus appear that purchase of the ornaments, is, at least *prima facie*, before the withdrawal of the amount on 4-6-2011. Whether the applicant did have income from salary from which she could have purchased the ornaments is a matter within the domain of the Income Tax Authority. *Prima facie* it would be hazardous not to release the ornaments in favour of the applicant on the premise that the purchase consideration is a part of proceeds of crime.

7. The applicant is ready to furnish bank guarantee in the sum of Rs.5,00,000/- (Rupees Five Lakhs) which shall be kept alive till the conclusion of the trial.

8. The orders impugned are partly quashed.

9. While the prayer to release cash seized is not pressed, the seized ornaments be released in favour of the applicant.

10. The application dated 03-7-2018 is partly allowed subject to the applicant furnishing bank guarantee in the sum of Rs.5,00,000/-

(Rupees Five Lakhs) to the satisfaction of the jurisdictional Magistrate.

11. The bank guarantee shall be kept alive till the conclusion of the trial.

12. The learned Magistrate is requested to take steps and complete the formalities referred to in the case of ***Sunderbhai Ambalal Desai v. State of Gujarat, (2002) 10 SCC 283*** and on being satisfied that the directions of the Supreme Court are complied with, pass further consequential order of release of the seized ornaments.

13. This criminal application is allowed in the aforestated terms.

JUDGE

adgokar