

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Cr1.O.P No.5254 of 2021

M/s.PMJ Gems and Jewellers Pvt. Ltd.,
having its registered office at
1-98/85/10, Plot No.10,
Vital Rao Nagar, Madhapur,
Hyderabad, Telangana-500 081,
represented by its Authorized representative,
Mr.Karanti Rami Reddy,
Employee ID-238,
Aadhaar No.4606 8367 4550
Son of Brahama Reddy.

Petitioner

vs.

State rep. by
The Inspector of Police,
Sankari Police Station,
Sankari, Salem District.
(Crime No.49 of 2020)

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to modify the conditions imposed in order dated 11.01.2021 passed in CMP.No.1221 of 2020 in Cr.No.49 of 2020 by the learned Judicial Magistrate-I, Sankari.

For Petitioner : Mr.Krishna Ravindran

For Respondent : Mr.M.Mohammed Riyaz,
Additional Public prosecutor

ORDER

This petition has been filed challenging the conditions imposed by the Court below while allowing the application filed by the petitioner for return of property.

2. The petitioner company gave a complaint to the respondent police to the effect that the jewellery belonging to them and which was transported in bus went missing. Based on the complaint, the respondent police registered an FIR in crime

No.49 of 2020 for offence under section 379 of IPC. During the course of investigation, the respondent police recovered the entire jewellery that is said to have been stolen and the same was handed over to the concerned Court.

3. The petitioner filed an application under section 451 of Cr.P.C. seeking for the return of the jewellery. Initially, the application was returned and the same became a subject matter of challenge before this Court in CrI.OP.No.15119 of 2020. This Court, by an order dated 25.09.2020, interfered with the return of the application and directed the Court below to entertain the application and pass orders on merits and in accordance with law within a period of four weeks.

4. Pursuant to the orders passed by this Court, the Court below entertained the application and allowed the same by an order dated 11.01.2021 in CMP.No.1221 of 2020. The petitioner company is aggrieved by the onerous conditions imposed by the Court below and hence, approached this Court challenging the same.

5. The learned counsel for the petitioner submitted that the petitioner is the owner of the property and the jewellery forms part of the business conducted by the petitioner and the conditions imposed by the Court below, virtually prevents the petitioner from dealing with the jewellery. The learned counsel for the petitioner further submitted that the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai Vs. State of Gujarat* has given guidelines to deal with an application of this nature and the Court below did not follow these guidelines. The learned counsel for the petitioner further submitted that the petitioner, in order to show their bonafides, are ready and willing to furnish even a bank guarantee or a fixed deposit to the value of the movable properties that have been seized in the Course of investigation.

6. The respondent police has filed a status report and merely explained the stage of investigation and the status of the case. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the Court below had taken into consideration the fact that the gold jewellery worth Rs.1,10,00,000/- (Rupees One Crore and ten lakhs) is being returned to the petitioner and therefore, has proceeded to impose certain stringent conditions.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. In the present case, there is no dispute with regard to the fact that the petitioner is the owner of the jewellery which

was stolen and subsequently seized by the respondent police in the course of investigation. The petitioner had filed an application before the Court below seeking for return of the jewellery. In a case of this nature, the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai Vs. State of Gujarat* reported in 2003 (1) CTC 175 has given sufficient guidelines insofar as imposing conditions while returning the property to the owner. The said judgment was taken into consideration by this Court in *Lenovo India Pvt. Ltd., rep. By its Inbound Manager, K.S.Mohan, No.4, Venkatnarayana Nagar, T.Nagar, Chennai* and another *Vs. the Inspector of Police, M-2, Madhavaram Police Station (Crime), Chennai* reported in 2013 (2) LW CrI. 754. The relevant portions in the judgment are extracted hereunder:

'24. In *SUNDERBHAI AMBALAL* (supra), the Hon'ble Apex Court also noted as under:

"5. Section 451 clearly empowers the Court to pass appropriate orders with regard to such property, such as:-

- (1) for the proper custody pending conclusion of the inquiry or trial;
- (2) to order it to be sold or otherwise disposed of, after recording such evidences as it think necessary;
- (3) if the property is subject to speedy and natural decay, to dispose of the same.

.....

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 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 change of tampering with the articles."

25. In *SUNDERBHAI AMBALAL* (supra), the Hon'ble Apex Court dealt with various types of case-properties such as vehicles, currency notes, movables and it enabled the criminal courts to give custody of the property to the complainants, owners and eligible persons in exercise of their power under Section 451 Cr.P.C. Taking note of the

fact that they may be required for marking them during trial, the Hon'ble Apex Court indicated an alternative procedure envisaging the preservation of such type of material/physical evidence in a converted form. It is pertinent to note paragraph 12 of the said Judgement, which runs as under:

"12. For this purpose, 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 could be produced if required at the time of trial; and (3) after taking proper security."

26. In SUNDERBHAI AMBALAL (supra), the Hon'ble Apex Court expressed its anxiety in unnecessarily keeping the case-properties either in Station Houses or in the Court Houses affecting the interest of the property owners and ruining the property itself. Thus, the Hon'ble Apex Court directed speedy disposal of the case- property in an appropriate manner giving guidelines. The Apex Court has taken note of the interest of the owners of the property on the one hand and the interest of the prosecution to produce them as evidence at the time of trial on the other hand. Striking a balance, the Hon'ble Apex Court issued various directions and laid down guidance as to the disposal of the property pending enquiry or trial.

27. In the case before us, accused Radha Krishnan is alleged to have committed an offence under Section 406 of I.P.C., namely, criminal breach of trust. He had committed such offence with respect to the property, namely, huge numbers of computers and computer desktops, entrusted to him. They runs to several lakhs of rupees. They involve huge amount.

28. The learned Judicial Magistrate, Thiruvottiyur, on 23.9.2013, in CrI.M.P.No.6241 of 2013, referring to SUNDERBHAI AMBALAL (supra) gave interim custody of the case-properties to the second petitioner, who received them on behalf of the first petitioner. Subsequently, in CrI.M.P.No.6638/2013, the first petitioner sought the permission of the learned Magistrate to sell them since the said goods are of such a nature keeping them as it is will result in they becoming a junk and they becoming obsolete in the computer market because of emergence of improved version of computers and huge capital/money is involved.

29. It is pertinent to note that the first petitioner

being owner of the case-properties has not been denied to by anybody. The accused did not claim the case-properties. There is no rival claim.

30. The first petitioner did not commit any mistake nor offence. It is victim of the offence. It has to sufferer as long as its money is locked up in the case-properties.

31. Owner wants to sell the case-property. However, prosecution wants to keep it as it is for marking them during trial.

32. Two things are very important. The interest of the property owner is to be protected and the interest of the prosecution in presenting the required physical evidence before the Court should not be lost sight of.

33. Section 451 of Cr.P.C also says that if the property is subject to speedy and natural decay, if it is otherwise expedient so to do, the Court may after recording such evidence as it thinks necessary, order it be sold or otherwise dispose of. The words, 'subject to speedy and natural decay', cannot be restricted to perishable items alone. There are various items of properties which are subject to deterioration and such deterioration may also set in speedily. A brand new vehicle or any kind of vehicle or any electronic item may come under this category. If computers or other electronic items are kept as it is, naturally, they will loose their utility value. Further, the phrase, 'if it is otherwise expedient so to do' 'otherwise disposed of' used in Section 451 Cr.P.C. empowers the Court to dispose of the property during enquiry, trial, if the situation so warrants. For instance, in a case huge quantity of gold items may be case-property. If a jeweller or a complainant/owner of the property, when urgently in need of money, for business purposes, educational and other purposes of their sons and daughters, they may have to dispose of those items to raise money. Thus, the situation may so warrant giving them permission to sell the case properties to raise the money for their pressing needs.

34. In K.W.GANAPATHY VS. STATE OF KARNATAKA [2002 CrillJ 3867], a Zen car was stolen. Its interim custody was given to the car owner, who purchased the car under finance from a bank. Since he was unable to pay the instalments, he has decided to dispose of the car and apply the sale proceeds towards the loan. He sought for permission of the Court to sell the car. He was denied permission since the car/case-property is needed for marking it during trial.

35. In GANAPATHY (supra), as before us arguments were placed by the property owner and the prosecution. The Karnataka High Court granted permission to the owner to sell the car. It would be profitable to extract here under the following portions of the Judgment in GANAPATHY (supra) as it highlights the power of a Criminal Court under [Section 451 Cr.P.C](#) to give permission even to sell the case-property.

"4. After hearing the counsel for the State and the petitioner, I find that the grievance made out by the petitioner is genuine. Of course, in the usual course of routine conditional orders are passed while delivering the property to the interim custody. When the property has any evidentiary value, it is to be kept intact and to ensure its production during the course of evidence for the purpose of marking as a material object the condition of non alienation is imposed. However, when the property has no evidentiary value and only the value of the property is to be properly secured for passing of final order under [Section 452, Cr.P.C](#), the necessity of keeping such properties intact by imposing onerous conditions, prohibiting its alienation or transfer would not be necessary in law.

5. The production of property which has evidentiary value during evidence is a part of a fair trial. With the advanced technology, it is not necessary that the original of the property inevitably has to be preserved for the purpose of evidence in the changed context of times. The reception of secondary evidence is permitted in law. The techniques of photography and photo copying are far advanced and fully developed. Movable property of any nature can be a subject matter of photography and taking necessary photographs of all the features of the property clearly is not a impossible task in photography and photo copying. Besides, the mahazar could be drawn clearly describing the features and dimensions of the movable properties which are subject matters of criminal trial. Many a time, we find as a routine course, the Courts impose condition of non alienation and to keep the property intact without alteration in any manner. Many a time such conditions act harshly upon rightful owners of the property from exercising their lawful ownership rights.

6. Irrespective of the fact whether the properties have evidentiary value or not it is not necessary that the original of the property has to be kept intact without alienation. As suggested above, the photography or Photostat copy of the property can be taken and made a part of the record duly certified by the Magistrate at the

time when the interim custody of the property is handed over to the claimant. In the event of the original of the property not produced in the evidence, photograph could be used as secondary evidence during the course of evidence. Ultimately, while passing final orders, it is only the value of the property that becomes a prime concern for the Court. If a person to whom the interim custody is granted, is not entitled to the property or its value and if some other person is held to be entitled to have the property or its value by taking necessary bonds and security from the person to whom interim custody is granted, the value could be recovered and made payable to the person entitled to. The rightful, owners, who have lost the property by an act of crime even after detection and recovery are continued to be prevented from beneficial possession and enjoyment of the same by the archaic conditions imposed as a regular routine despite the changed context of scientific developments.

7. To illustrate, a situation one X loses gold jewellery by theft. The police successfully detect and discover the gold jewellery the same is produced before the Court. Production of gold jewellery and marking of the same in evidence to prove the same as corpus delicti is one of the insistence of law as a part of fair trial. Even after the gold jewellery is given to the custody of X to deprive him by imposing the condition of non alienation from exercise of right ownership for unreasonable length of time would be too harsh and one sided, and a nonchalant approach towards the victims of crime. It may be that X require the gold jewellery for the purpose of the marriage of his daughter or may be that he may require funds for medical treatment or other genuine needs, when he has no alternative source except by sale of the gold jewellery, the condition of non alienation in such situation would be onerous and unreasonable. The production of property during the trial having incriminating value is a insistence to secure the rights of accused as a part of fair trial. At the same time, when there is a possibility of having a secondary evidence of the said property, it is no longer necessary in law to insist that the property to be kept intact without alteration and non alienation.

8. In order to ensure the recovery of value, it is necessary that the trial Court shall take all necessary diligent steps to get the market value of the property, correctly assessed the photography of the property,, properly taken depicting all its features and dimensions and before the property is delivered to the interim custody, the photographs have to be certified by the Magistrate. Further necessary bonds and security to be

taken from the person to whom interim custody to be given for the value of the property in order to ensure prompt recovery of value from the person to whom interim custody is given. By following the said safeguards, it is no longer necessary to follow the archaic convention of imposing condition of non alienation. After all the Court while passing a judicial order of interim custody is guided by the investigation material and other prima facie material, which support the claim and title of the person to whom interim custody is given. Having once given the interim custody to the person who is supposed to be the owner of the property, depriving him to effectively use and exercise the lawful ownership rights would be unlawful."

36. In CANARA BANK VS STATE OF PUNJAB AND ANR. [2006 CriLJ 86], Bank granted loan to the accused to purchase a tractor. The accused purchased the tractor. Later, it was found that he practised fraud on the bank. A criminal case was registered. The tractor was seized. The bank was given interim custody of the tractor with a condition that it should not be disposed of. Since keeping the tractor as it is would make it a junk, the bank wanted to sell it. It sought the permission of the trial Court to sell it. However, it was dismissed. The bank came to the High Court. The bank and the prosecution placed arguments similarly as it has been placed before us by the property owner and the prosecution. Under Section 451 Cr.P.C., the High Court permitted the bank to sell the tractor.

37. It would be useful to note down the arguments generated in 2006 CriLJ. 86 before the High Court and the reasons upon which the High Court granted permission to sell the tractor. They runs as under:

5. Counsel for the petitioner contends that even though the tractor is case property, it was released, to the petitioner, vide order dated 5-2-2004, subject to conditions one being : that it would not be disposed of without prior permission of the Court; the Court was required to consider the feasibility of granting permission to sell. The application and the revision have been dismissed on the short ground that the tractor is case property, and required to be produced on each and every date of hearing. The Courts have ignored the provisions of Section 451 of the Cr.P.C. and have proceeded to decide the application, as if case property cannot be sold in any eventuality. Section 451 of the Cr.P.C, envisages sale of case property and does not confine the powers of a Court, regarding sale of property only to goods subject to speedy and natural decay. It empowers the Court to dispose of case property, not

subject to speedy and natural decay, provided the Court records a finding that it is expedient to do so. It is further contended that a tractor, may not be a perishable; item but being a machine is subject to natural decay, It comprises of rubber and mechanical parts which if not used, served, repaired and replaced regularly, would turn the tractor into junk, thus causing loss to the Bank and also to accused. The tractor is of no use to the Bank. If sale is permitted, it would enable the bank to recover a part of the loan advanced and would also reduce the accused's (respondent No. 2) civil liability. It is further contended that the bank is ready to deposit the sale proceeds before the trial Court, release whereof would be subject, to the such orders as the trial Court may pass.

6. Counsel for the State of Punjab, on the other hand, contends that the orders passed by the learned Courts below are legal and valid. Case property cannot be ordered to be sold as it is a substantial piece of evidence, relating to the commission of an. offence, Its sale would prevent the prosecution from producing the tractor before the Court at the time of adducing evidence. Even otherwise, the provisions of Section 451 of the Cr. P. C. relate to perishable goods, subject to decay and a tractor not being perishable the Courts below rightly declined permission to sell the tractor.

7. I have heard the learned Counsel for the parties and perused the record. Section 451 of the Cr. P. C. reads as under :--

Section 451, Order for custody and disposal of property pending trial in certain cases,-- When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

8. When any property is produced before a Criminal Court, during any inquiry or trial and in case a prayer is made for sale thereof, the Court is empowered to, if the property "... is subject to speedy and natural decay or if it is otherwise expedient so to do..." order its sale or disposal. For this purpose, the Court may if it deems appropriate record such evidence as it thinks necessary. The words...or it is otherwise expedient so to do so... succeeding the words "... speedy and natural decay..." are

not to be read edjusdem generis to the words "speedy and natural decay." The use of the word expedient confers a discretion, upon a Court to order sale of case property other than property subject to speedy and natural decay, provided the Court records a finding that it is expedient to do so subject to such terms and conditions as the Court, may deem appropriate. This power is to be exercised judiciously and depending upon the facts and circumstances of each case.

9. Invariably, property brought before a Court during the course of an inquiry or a trial would be case property and therefore, to decline permission, to sell on the sole ground, that the property is case property would be a negation of the provisions of Section 451 of the Cr P.C. The property being case property, is no doubt a relevant consideration but except where fact and circumstances of a case so warrant cannot be a sole circumstance, to decline permission to sell. Each case must be decided on its own peculiar facts and circumstances,

10. Applying the aforementioned principles of law, as contained in Section 451 of the Cr. P. C. to the facts and circumstances of the present case, I am of the considered view that the application for permission to sell the tractor could not have been declined on the sole ground and that it was case property.

11. A tractor is an automobile consisting of mechanical and rubber parts, which by their nature are subject to natural decay. Though the tractor has been released to the bank vide order of the Judicial Magistrate 1st Class dated 5-2-2004, it is of no use to the Bank and is lying idle. It would soon be reduced to junk. The sale of the tractor, would benefit both the bank and the accused. The bank would be able to recover a part of the loan advanced and the civil liability of the accused would stand correspondingly reduced. In my considered opinion, in the facts and circumstances of the present case, even though the tractor is a case property expediency of the situation demands that the bank be permitted to sell the tractor subject to certain terms and conditions.

38. In SUNDARAM FINANCE LTD VS THE STATE OF TAMIL NADU AND ANR. [2011 (1) MLJ 191], the vehicle was purchased by the borrower on finance from a financier. The vehicle came to be concerned in a criminal case. Ultimately, with the consent of the borrower, interim custody of the vehicle was given to the financier. The financier sought the permission of the Court to sell the vehicle and apply the sale proceeds towards the loan amount. It was rejected by the trial Court. The financier

came to this Court. Before this Court, the financier explained the need to sell the vehicle. The prosecution explained the need to keep the vehicle to mark it as a material object during trial. This Court referring to SUNDERBHAI AMBALAL (supra) permitted selling of the vehicle after taking photograph of the vehicle.

39. In CrI.R.C.(MD)Nos.74 & 75 of 2011 dated 18.10.2011 [CHOLAMANDALAM FINANCE VS STATE AND OTHERS], the financier sought the permission of the trial court to sell the vehicle since its market value has getting down and there will be huge loss. Prosecution opposed since the vehicle is needed for marking it at the time of trial. This Court referring to the scope of Section 451 Cr.P.C and SUNDARAM FINANCE (supra) granted permission to sell the vehicle.

40. It is pertinent to extract hereunder, the following observations of this Court in CHOLAMANDALAM FINANCE (supra):

"3. The learned counsel for the petitioners Mr.G.R.Swaminathan would contend that it is a known fact that if the vehicles were allowed to remain in open place and even if they were kept in a protected place, the utility and value of the vehicles will go down and to keep the vehicles till the disposal of the trial will not serve any purpose.

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6. When the Court finds that it is no longer necessary to keep the case property under the custody, it had to return the same to the person who is competent to get it. The Court is required to make an enquiry to ascertain who is the party eligible to get interim custody of the property. Likewise, if the property is of such a nature, that it would lose its value and utility, then the Court may also order for the sale of the property and direct that the proceeds be deposited into the Court. In one of such occasions arose before this Court in 2011 (1) MLJ 191 [Sundaram Finance Ltd., v. State of Tamil Nadu] C.T. Selvam,J. has expressed his view that the return of the vehicles and permission for sale thereto should be the general norm rather than the exception as it is today and in case where return of vehicles is sought and the claim therefor is highly contested, resort to sale of vehicle and credit of the proceeds in fixed deposits pending disposal of the case would be the common good. The learned Judge has also referred the decision of Sundarbai Ambalal's case (supra) and also other decisions of the

Supreme Court and reached a conclusion that none gain when the mere shell or the remnants of the vehicle are returned to the person entitled thereto, after completion of the trial, that it would no surprise to find that several vehicles have not been so much as claimed after completion of trial, because of the worthless state they have been reduced to and that it is but natural to expect that a person eventually entitled would rather have the sale proceeds together with interest, than nothing at all. I am in respectful agreement with the opinion rendered by the learned Judge."

41. Thus, power is available to the criminal courts under Section 451 Cr.P.C to give permission to the owner or to the persons entitled to sell the case-property even pending enquiry or trial, if the property is subject to speedy and natural decay or in other words, in the facts and circumstances of the case, if the Court is of the view that such permission is required to be granted. But, at the same time, in property offences and in other type of offences, where property is involved, the facts and circumstances of the case may need, production of them as material objects, as physical evidence during trial. Reading Sections 451 and 452 of Cr.P.C, it is seen that converted form of such physical evidence may also be produced before the court at the time of trial. As we have seen already in SUNDERBHAI AMBALAL (supra), the Honourable Apex Court enabled production of such converted form of evidence of case properties.

42. The Hon'ble Apex Court in SUNDERBHAI AMBALAL (supra) permitted photographing of the material object and obtaining the signature of the complainant and also of the accused thereon and keep them in the case-records to be exhibited at the time of trial. Under this category videographing also will come.

43. In SUNDERBHAI AMBALAL (supra), the Hon'ble Apex Court also visualized a situation where the accused may refuse to sign/endorse. Thus, at paragraph 24 of its judgment the Hon'ble the Apex Court observed that, "it is made clear that in case where the accused disputes that he is not involved in the alleged incident and no article was found from him then such endorsement be taken on the photograph." Thus, when the accused disputes that he is not involved in the offence or he is disputing the property or he has certain contentions as regards the property, the same shall be endorsed in the photograph, his signature shall be obtained. It is accused putting his signature with prejudice/objection. Thus, the interest of the prosecution, the interest of the property owner, the need of the prosecution to produce it as evidence during

trial and the right of the accused will be protected.

44. Thus, the learned Judicial Magistrate, Thiruvottiyur in disposing of the petition of the first petitioner in CrI.M.P.No.6638 of 2013 wherein permission has been sought for to sell the case- property, has not dealt with the matter in proper perspective, in the light of the provisions of Section 451 Cr.P.C and the directions and guidance issued by the Hon'ble Apex Court in SUNDERBHAI AMBALAL (supra).

45. In view of the foregoing,

(i) The order of the learned Judicial Magistrate, Thiruvottiyur passed in CrI.M.P.No.6638 of 2013 dated 04.10.2013 is set aside.

(ii) CrI.M.P.No.6638 of 2013 is remanded back to the said Magistrate.

(iii) The learned Magistrate will obtain signature of the accused in the photograph of the case-properties.

(iv) In case, the accused makes any dispute/contention as regards the case-property, the same shall be endorsed in the photographs and his signature thereon shall be obtained.

(v) Thereafter, the learned Judicial Magistrate shall grant permission to the first petitioner to sell the case-properties.

(vi) Surety affidavit for the case-properties already produced in CrI.M.P.No.6241 of 2013 shall be treated as surety affidavit for the purpose of CrI.M.P.No.6638 of 2013 also. ''

9. This Court took pains to take into consideration all the judgments on the issue and the law was clearly explained in this judgment. This Court made it clear that the criminal Court, while exercising its jurisdiction under Section 451 of Cr.P.C., must take into consideration the fact that the owner of the property who has nothing to do with the alleged offence must be able to deal with the property even during the pendency of the enquiry of the trial by taking necessary safe guards as per the guidelines given by the Hon'ble Supreme Court in Sunderbhai Ambalal Desai Vs. State of Gujarat referred supra.

10. In the present case, the petitioner is mainly aggrieved by conditions 2 to 7 imposed by the Court below. For proper appreciation, those conditions are extracted hereunder:

''2. He shall not sell or pledge the case properties/jewels/articles (Item No.1 to 22) in what so ever manner;

3. He shall not alter the structure and design of the case properties/jewels/Articles;

4. He shall keep the case properties/jewels/articles in same condition and produce the same as and when required by this Court;

5. He shall execute a bond for Rs.1,10,00,000/- (Rupees One Crore and ten lakhs) along with two sufficient sureties to the satisfaction of this court;

6. The sureties shall produce the solvency certificate for the value of the bond;

7. Further, one of the managing directors of the said company is directed to appear before this Court along with necessary documents and ID Proof and also execute a bond in addition to the sureties;"

11. A careful reading of the conditions imposed by the Court below, clearly shows that the petitioner cannot deal with the jewellery in any manner. The conditions imposed by the Court below will cause grave prejudice to the petitioner since the petitioner is involved in jewellery business and the petitioner must be permitted to deal with the jewellery in the course of business. The petitioner, in order to show their bonafide are even prepared to furnish a bank guarantee or fixed deposit to the tune of Rs.1,10,00,000/- (Rupees One Crore and ten lakhs) which is the value of the jewellery that is involved in the present case.

12. Taking into consideration the facts and circumstances of the case, this Court is inclined to interfere with conditions 2 to 7 imposed by the Court below and the same is modified as follows:

a. The Court below is directed to make arrangements to take photographs of the jewellery and also prepare a panchanama;

b. The accused person shall be issued notice and he shall be called upon to take a stand in the case and if the accused person takes a stand that he is not involved in the alleged incident and no article was recovered from him, the accused person shall be directed to put his signature on the photograph of the case property and this shall be marked as a document during trial;

c. The petitioner is directed to furnish security by way of fixed deposit to the tune of Rs.1,10,00,000/- (Rupees One Crore and ten lakhs only) and the fixed deposit receipts shall be submitted before the Court below;

d. The court below shall permit the petitioner to deal with the jewellery;

e. The authorized representative of the company shall appear before the Court below with necessary documents and identity proof and he shall be permitted to execute the bond in addition

to the sureties; and

f. The other conditions imposed by the Court below shall stand as it is.

13. This Criminal Original petition is disposed of with the above directions.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

rli

To

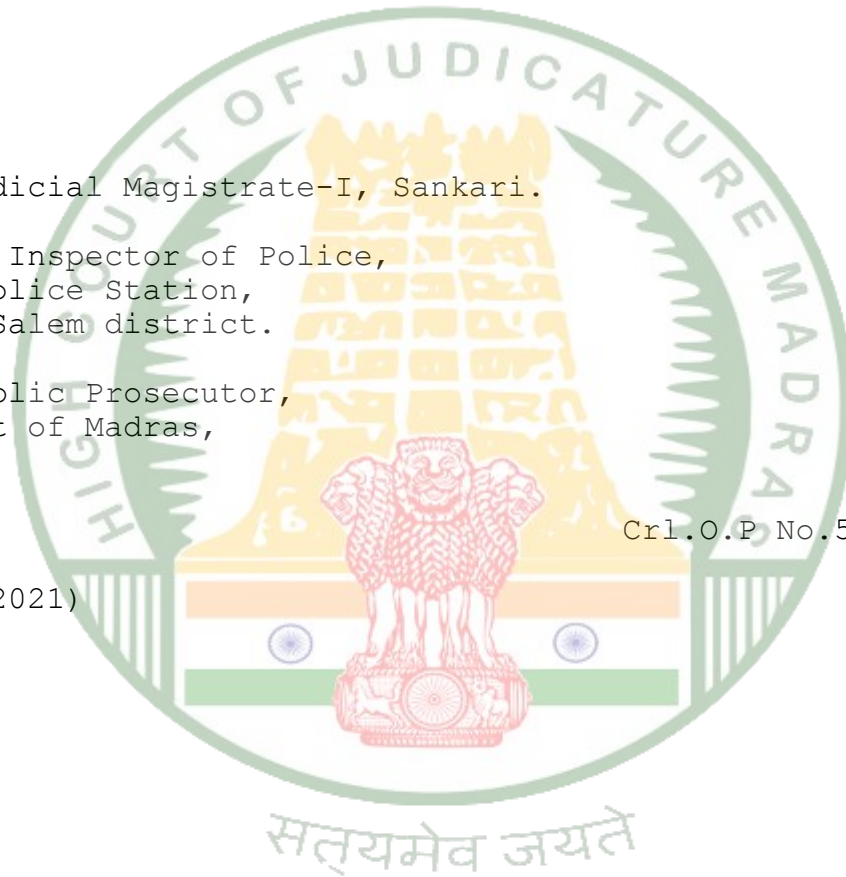
1. The Judicial Magistrate-I, Sankari.

2. TheThe Inspector of Police,
Sankari Police Station,
Sankari, Salem district.

3. The Public Prosecutor,
High Court of Madras,
Madras.

PMK(CO)
CB(27/04/2021)

Crl.O.P No.5254 of 2021



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