

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.227 OF 2019
IN
CRIMINAL APPEAL NO.123 OF 2005**

Upendra Tarachand Shah & Anr. Applicants
Versus
The State of Maharashtra & Ors.Respondents

Mr. Ajit J. Kenjale, Advocate a/w. Sai Rajendra Kadam, for the Applicants.

Smt. M.R. Tidke, APP for the Respondent-State.

Mr. Harsh Nishar, Advocate a/w. Amey Deshpande, Niyati Sontakke, Vandana Bait, for the Appellant in Cri.Appeal No.413/2006.

CORAM : SARANG V. KOTWAL, J.

DATE : 11th OCTOBER, 2022

P.C. :

1. The applicant No.1 is the original first informant in C.R. No.284/2000 dated 24.10.2000 registered at Pant Nagar police station, Mumbai under Sections 395, 397 read with 170 of IPC. The applicant No.2 has offered her property as security when the articles were returned to the applicant No.1. The investigation was carried out and nine accused faced the trial in respect of the incident dated 24.10.2000.

This application is for discharge of applicant No.2 Smt. Ramaben Shah who had furnished surety supporting the first informant – the present applicant No.1 for Rs.1,09,28,931/- for the property which is subject matter of this offence and the trial. At the conclusion of the trial, nine accused were convicted and by the operative part of the order in Sessions Case No.218/2001. The learned Additional Sessions Judge, Brihan Mumbai had directed the property, namely, cash and jewellery to be returned to the applicant No.1 on proper identification by PW-43 Praful Chandrakant Bhosale after the appeal period was over or subject to the appellate Court's order.

2. Various accused preferred different appeals. The first order regarding return of property was passed on 13.1.2006 in Criminal Application No.7812/2005 in Criminal Appeal No.123/2005. It was an application made by the applicant No.1 himself. By the operative part, the following directions were issued:

- i. The trial Court was directed to implement the directions given in the trial Court's judgment and

order by handing over the property as directed by the operative part of the judgment to the applicant No.1.

- ii. Before receiving the property, the applicant No.1 was directed to furnish adequate security to the satisfaction of the trial Court for the cash amount. The applicant No.1 was directed to furnish usual bond recording an undertaking to maintain the jewellery/articles till the disposal of the appeals and to produce the same before the Court in case the direction to that effect was issued.
- iii. Before handing over the articles/jewelery to the applicant No.1, the same should be properly photographed at the cost of the applicant No.1 in the presence of an officer of the trial Court. The photographs were to be signed by the applicant No.1 and the said officer and the same were to be retained by the trial Court on its record.

- 3. After this order, another order was passed on 12.12.2008 in Criminal Application No.510/2007 in Criminal

Application No.7812/2005 in Criminal Appeal No.123/2005.

By the operative part of that order, following directions were issued :-

- i. As far as the cash was concerned, the applicant No.1 was held to be entitled to cash amount subject to compliance of conditions of the earlier order.
- ii. The applicant No.1 was held to be entitled to take custody of the articles/jewelery subject to furnishing security in the sum of Rs.1,09,28,931/- to the satisfaction of the Sessions Court. Before accepting the security, the Sessions Court was directed to hear the concerned Public Prosecutor.
- iii. It was also directed that before handing over the articles/jewelery to the applicant No.1 the same was directed to be properly video filmed at the cost of the applicant No.1 in the presence of an officer of Sessions Court. The video film and/or C.D. was directed to be kept in a sealed envelope and the envelope was directed to be signed by the applicant No.1 and the said officer of the Court. The sealed

envelope was directed to be kept in the record of the concerned Sessions Case. And if the record was transmitted to this Court, the packet was also directed to be transmitted to this Court and same was directed to be kept on the record.

- iv. On compliance of these requirements, the applicant No.1 was held to be entitled to deal with and/or dispose of the jewellery.

4. Heard Shri Ajit Kenjale, learned counsel for the applicants and Smt. M.R. Tidke, learned APP for the State.

5. Learned counsel for the applicants submitted that in compliance of that order, applicant No.2 Smt. Ramaben Shah had furnished the surety for Rs.1,09,28,931/-. He submitted that the applicant No.2 Smt. Ramaben Shah is now 80 years of age and she wishes to deal with her property which she had furnished as security to help the present applicant No.1. He submitted that most of the appeals are disposed of except one appeal i.e. Criminal Appeal No.413/2006 preferred by accused No.3 Devendra Maru.

6. Learned counsel submitted that there is only very small portion of recovery from him and no other appellant has claimed the property recovered in this case. Therefore, there is no necessity to furnish security any longer in respect of the property which was returned to the applicant No.1.

7. Learned counsel for the applicants has furnished a chart which is taken on record, which also contains certain orders showing disposal of other appeals. The status of these appeals is as follows :

I. Accused No.1 Kinit Amin had filed Criminal Appeal No.339/2005. In this case, the appellant had served the sentence and the appeal was dismissed for want of prosecution and also as it had become infructuous. This order was passed by this Court (Coram: R.C. Chavan, J.) vide order dated 8.8.2011.

II. Accused No.2 Gita Prakash Parmar had filed Criminal Appeal No.83/2006. She also served her sentence and her appeal was dismissed having

rendered infructuous vide order dated 28.2.2012 passed by this Court (Coram: A.V. Nirgude, J.).

III. Accused No.3 Devendra Manohar Maru had filed Criminal Appeal No.413/2006, which is the only appeal pending final disposal.

IV. Accused No.4 Kishor Mohan Padaya had filed Criminal Appeal No.674/2005. He had also served his sentence and the appeal was disposed of as not prosecuted, vide order dated 1.8.2011 (Coram: R.C. Chavan, J.).

V. Accused No.5 Mohd. Umar Farooq Khan's details are not available. Learned counsel for the applicants makes a statement that with due diligence search was made but there is no reference to his appeal and, therefore, there is no information available.

VI. Accused No.6 Noorjahan @ Salma Mohd. Yunus Shaikh had filed Criminal Appeal No.499/2006. She was reported to be dead and her appeal was disposed of vide order dated 6.10.2022.

- VII. Accused No.7 Jayesh @ Chikoo Mansukhlal Mehta had filed Criminal Appeal No.456/2005. His appeal was disposed of vide order dated 4.7.2011 (Coram: R.C. Chavan, J.).
- VIII. Accused No.8 Shakira Bano Bashir Khan had filed Criminal Appeal No.123/2005. She was also reported to be dead and her appeal was disposed of vide order dated 6.10.2022.
- IX. Accused No.9 Surinder Singh Jorasingh Punjabi had filed Criminal Appeal No.673/2005. He had served his entire sentence and the appeal was disposed of vide order dated 1.8.2022 (Coram: R.C. Chavan, J.).

8. Thus, it is a question of two remaining accused out of which the details regarding Mohd. Umar Farooq Khan are not known. The record shows that PW-11 Shashikant Nirwane was acting as pancha when recovery was effected at his instance. Twelve pieces of golden buttons weighing 30.780 grams, one bindi with chain weighing 8.700 grams and three pieces of curling of yellow metal weighing 16.520

grams i.e. total 56.020 grams of gold was recovered at his instance.

9. From accused No.3 Devendra Maru six pieces of ear-rings weighing 14.500 grams and three gold rings weighing 13.200 grams i.e. total gold weighing 27.700 grams was recovered.

10. Thus, it appears that from these two accused only a small portion of the stolen articles were recovered which form part of the trial Court's order. The rest of the property was recovered from other accused whose appeals are disposed of. There are no claimants in those appeals claiming those ornaments which were returned to the applicant No.1. Thus, considering that Criminal Appeal No.413/2006 is the only pending appeal which is awaiting its turn for final hearing, the applicants can be granted relief in his application.

11. There is no reason why the old lady who has furnished the surety should be deprived of full rights regarding her property when there are no claims for this

huge security in the appeals. In this view of the matter, the application deserves to be allowed. Hence, the following order :

:: O R D E R ::

- i. Interim Application is allowed.
- ii. It will not be necessary now to furnish security for the property which is returned to the applicant No.1.
- iii. The applicant No.2 Smt. Ramaben Shah is discharged from her responsibility as surety for Rs.1,09,28,931/-.
- iv. There is no requirement now of furnishing any surety or security for the property which is already returned to the applicant No.1.
- v. With these directions, the application is disposed of.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

Digitally signed
by
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PRAKASHRAO
DESHMANE
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2022.10.12
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