

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1052 OF 2023

MUKUL VINODKUMAR GOYAL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Mr. Girish K. Naik Thigle
APP for Respondent – State : Mr. S.W. Munde
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CORAM : R. M. JOSHI, J.
DATE : AUGUST 22, 2023

PER COURT :

. This petition takes exception to the order dated 06.07.2023 passed by Judicial Magistrate First Class, Aurangabad in Criminal Misc. Application No.1633 of 2023 rejecting application filed by the petitioner under Section 457 of the Code of Criminal Procedure seeking the custody of seized muddemal properties in Cr.No.436 of 2023 registered with MIDC Waluj Police Station, Aurangabad i.e. cash of Rs.35,84,000/-, four wheeler Wagon R car bearing registration No.MP-15-CA-3156, two mobile phones of Redmi company, two gold rings and two gold chains seized from the accused.

2. Learned counsel for the applicant submits that the specific report was lodged with the police with regard to the theft of the cash and it is subsequently revealed that out of some stolen cash articles such as car, mobile phones and gold ornaments etc. were purchased. By referring to the Judgment of the Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai vs. State of Gujarat, 2002 AIR SCW 5301** it is submitted that once the material produced by the applicant / complainant on record indicates that the articles seized belongs to him, the articles are required to be handed over to him. It is also submitted that in such situation the application filed under Section 451 of the Cr.PC. should be decided promptly and at the earliest.

3. There cannot be any dispute about the proposition canvassed by the learned counsel by relying upon the judgment of the Hon'ble Apex Court, the question arises in the present case is that the accused from whom the cash as well as other articles are seized, is not heard before passing of the order.

4. In the considered view of this Court since the cash as well

as the articles were seized from the custody of the accused, it is just and necessary to seek say of the accused before passing any order. The said aspect has been missed from the attention of the learned Magistrate. In such circumstances, the impugned order cannot sustain.

5. Learned counsel for the petitioner states that he will add accused as respondent in Criminal Misc. Application No.1633 of 2023. He further submits that in the said seized cash, the currency notes of denomination of Rs.2000/- are included. It is his submission that unless the said notes are exchanged on or before 30.09.2023, the said notes will remain nothing but piece of paper. He therefore pressed for expeditious disposal of the application.

6. In view of above, following order is passed.

ORDER

(i) The impugned order dated 06.07.2023 passed by learned Judicial Magistrate First Class, Aurangabad stands quashed and set aside.

(ii) Learned Magistrate is directed to decide the application filed under Section 457 of Cr.PC. seeking the custody of seized muddemal properties in connection with Cr.No.436 of 2023 afresh within a period of 15 days from the date of passing of this order subject to service of notice to the accused.

7. Parties to act upon authenticated copy of this order.

[R. M. JOSHI]
JUDGE

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GGP