



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

964 CRIMINAL WRIT PETITION NO.987 OF 2024

IMRAN SALIM SHAIKH
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for the Petitioner : Mr. Shermale K. N.
APP for Respondent-State : Mr. P. J. Bharad.

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CORAM : S. G. MEHARE, J.
DATE : 11.06.2024

PER COURT :-

1. The petitioner being dissatisfied with the orders passed by the learned Judicial Magistrate First Class, Sangamner, dated 19.12.2023, in Criminal Misc. Application No.941 of 2023 and learned Additional Sessions Judge, Sangamner, in Criminal Revision Application No.01 of 2024, dated 19.03.2024 approached this Court under the writ jurisdiction.

2. The petitioner had lodged the report of theft against unknown person. The Investigating Officer arrested the accused and recovered the gold in the form of ingot at the instance of the accused. He had applied under Section 451 of the Cr.P.C. for the custody of ingot. The Investigating Officer has left the matter with the Court. However, the Prosecutor

raised an objection that there was no identification of the golden ornaments and there is no evidence that the ingot was made of the stolen property.

3. Learned Judicial Magistrate First Class doubted the title of the applicant/petitioner and rejected the application.

4. Learned Additional Sessions Judge also observed that the petitioner had produced the bills for purchasing the ornaments and not the ingot. He further observed that the investigation was in progress, it would be uncertain as to the additional facts emerging from further investigation being carried out. In other words, he dismissed the Criminal Revision Application on the ground that the investigation is in progress.

5. It has been argued that the fact of the theft of golden ornaments from the house of the petitioner has not been disputed. The recovery of the gold ingot at the instance of the accused in the crime registered on the complaint of the complainant is also not disputed. The accused also did not claim the title over the said ingot. *Prima facie*, there was no impediments believing that the petitioner is the person entitled to receive the custody of the ingot till the disposal of the trial.

It has also been argued that both orders are erroneous and without considering the facts of the case.

6. Learned APP would submit that identification of the stolen property is the core question that goes to the roots of the claim of the petitioner. The trial is pending. In the case of theft, the stolen property is the material evidence. Even if the petition is allowed, the petitioner could not enjoy it as the nature of the property could not be changed. There are no circumstances which otherwise expedient to release the ingot pending the trial to the petitioner except his mental satisfaction.

7. Section 451 of the Cr.P.C. empowers the Criminal Court to make such order as it thinks fit for the proper custody of the property pending the conclusion of the inquiry or trial. It is the discretion of the Court to pass such an order releasing the property pending the conclusion of the trial. Apart from this, 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. *Prima facie*, there are reasons to believe that the golden ornaments were stolen from the house of the petitioner. The crime was registered on the first information report. One person has been arrested. On his statement, under Section 27 of the Indian Evidence Act, the golden ingot which was transformed from the stolen ornaments has been recovered. The learned APP is right in arguing that the stolen property is the best evidence in the case of theft and that is required to be produced before the Court for identification during the trial. Therefore, its nature cannot be changed. Ordering the custody of the property pending trial, is always subject to certain conditions and undertaking by the person claiming the custody of the said property.

9. Admittedly, the trial is pending. Though the accused has no objection to release the ingot in favour of the applicant, it would be required for the identification during the trial. However, *prima facie* there appears no dispute about the theft of the golden ornaments from the house of the applicant and corroboration is there to believe that, that golden ornaments were transformed into ingot. In this peculiar circumstances, no harm would be caused to the prosecution if the custody of the ingot recovered in the crime is handed over to the petitioner

during the pendency of the trial on certain conditions. Hence, the following order :

ORDER

- (i) Writ Petition is allowed.
- (ii) The orders passed by the learned Judicial Magistrate First Class, Sangamner, dated 19.12.2023, in Criminal Misc. Application No.941 of 2023 and learned Additional Sessions Judge, Sangamner, in Criminal Revision Application No.01 of 2024, dated 19.03.2024 quashed and set aside.
- (iii) Learned Judicial Magistrate First Class, Sangamner is directed to hand over the custody of the ingot recovered in the crime to the applicant, till the conclusion of the trial, on the following conditions :
 - (a) He shall not change its nature and form of the ingot.
 - (b) He shall not create a third party interest over the golden ingot.
 - (c) He shall not pledge it for raising the loan.
 - (d) He shall undertake that he would produce the property, if required for the identification during the trial.
 - (e) Its custody would be subject to the order under Section 452 of the Cr.P.C.

- (f) The ingot be handed over to the applicant after testing its purity from the goldsmith appointed by the Court, if any or by the private goldsmith on executing the bond of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand only).

(S. G. MEHARE, J.)

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