

C.R.R. 570 of 2022

**Sweety Nath Ray
Vs.
The State of West Bengal & Ors.**

Mr. Shibaji Kumar Das Mr. Kushal Kumar	...For the Petitioner
Mr. Prasun Mukherjee	...For the Opposite Party No. 6
Mr. Priyankar Ganguly	...For the Opposite Party No. 5
Mr. Santanu Talukdar	...For the Opposite Party No. 17
Mr. Debasish Roy, Ld. PP Mr. Anand Keshari Mr. Akash Ganguly	...For the State

This application pertains to an order of rejection in respect of petitioner’s prayer for return of seized currency notes dated 10th December, 2021 passed by the learned Additional Chief Judicial Magistrate, Alipore, South 24 parganas in ACGR 2027 of 2021.

The petitioner prayed for the return of the monetary amount seized during the course of investigation in connection with Kasba Police Station case no. 141 of 2021 dated 24.5.2021 under Sections 170/364A/386/120B/34 of the IPC, which was allegedly paid by the petitioner as a ransom amount for the release of her husband namely, Ajit Kumar Ray from the unlawful custody of the accused persons/opposite party nos. 2 to 17 herein.

Learned Trial court upon hearing the parties, were pleased to call for a report from the Investigating agency. The investigating officer submitted a report on 19.7.2021, wherein he stated that from the point of view of investigating agency, they have no objection if the seized ransom amount i.e. physical currency of Rs. 14,92,500/- be returned to the petitioner.

Learned court below while passed the impugned order, considered the said report but he came to a finding that a dispute

has cropped up over the seized currency notes, which can only be determined after conclusion of trial because the accused persons/opposite party nos. 2 to 17 herein have also laid a claim to a portion of the seized currency notes alleging that such notes were not part of the alleged ransom amount and they have also made some allegations as to the mode and manner of the seizure. The court below further held that there is also question of identification of the seized currency notes at the time of trial which has assumed even greater significance in view of the counter claim raised with respect to the same by some of the accused persons and as such, the court below refused to return the seized ransom amount to the petitioner herein.

Being aggrieved by the said order of rejection, Mr. Das, learned counsel for the petitioner submits that if it is lying in the police Malkhana at the Police Station for an indefinite period, the said huge amount of currency notes likely to be damaged, destroyed or lost. Moreover, no fruitful purpose will be served by keeping it in the Malkhana of Police Station for an indefinite period because nobody knows when the trial would be concluded. He further submits that the learned Magistrate despite expressly recording in the impugned order that the investigating officer did not raise any objection in returning the seized ransom amount, unnecessarily refused to return the same in favour of the petitioner. In fact, the court below erroneously considered the objection of the accused persons and erroneously held that there is "dispute" on the ground of the prayer made by some of the accused persons/opposite parties herein opposing and claiming the seized ransom amount. In fact, learned Magistrate failed to consider the spirit of Section 451 of the

Code of Criminal Procedure, which empowered him to pass an appropriate order for proper custody of the property pending inquiry and trial.

He further submits that the learned Magistrate ought to have considered the fact that the investigation in connection with the instant case is over and the ransom amount seized from the accused persons/opposite parties herein have been recorded in the respective seizure list enumerated in the charge-sheet, filed in connection with the instant case. Accordingly, the petitioner has prayed for setting aside the order impugned and prayed for return of the ransom amount to the custody of the petitioner.

Learned counsel for the opposite parties submits that they have no objection if the said ransom amount is returned to the petitioner herein subject to the execution of necessary bond and also subject to the condition that the entire physical currency notes i.e. cash money of Rs. 14,92,500/- be kept in his safe custody and be produced before the court as and when he will be asked to produce by the court.

Learned counsel for the State also submits that the prayer may be allowed in favour of the petitioner subject to the execution of bond and also on condition that he will produce the entire currency notes physically during trial or at any subsequent stage when he will be asked to produce for identification and for any other purpose.

It has been reiterated in various judgments that with regard to the disposal of cash, it is of no use to keep such articles in police custody for years till the trial is over. Needless to say that an order passed under Section 451 of the Code of Criminal Procedure is temporary and intended to preserve the property pending trial and

even if custody is given to the owner, he acts as a representative of the court. Here, the petitioner, who claimed to have paid the same towards ransom amount, best entitled for possession of the same. As such, court below ought to have given interim custody of such alleged ransom amount to the petitioner, best entitled for its possession on furnishing security/bond with a condition to produce the same as and when directed by the court.

Having considered the aforesaid submissions made on behalf of all the parties, CRR 570 of 2022 is accordingly disposed of with a direction upon the court below to hand over the seized physical currency notes allegedly amounting to Rs. 14,92,500/- to the petitioner after making necessary inventory and also by making necessary videography, which shall be kept in a pen drive and be made part of the seizure. The petitioner will execute an indemnity bond of Rs. 50,00,000/- that entire currency notes/physical currency will be produced before the court as and when he will be asked to produce the seized property physically. For this purpose, the court below may also ask additionally for proper security from the petitioner and the court below for this purpose may also follow the procedure of recording such evidence as it thinks necessary, as provided under Section 451 of the Code of Criminal Procedure.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)