



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 812 OF 2023

RAJU BABULAL SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Mr. Ravindra V. Gore, Advocate for Petitioner;
Mr. S. M. Ganachari, A.P.P. for Respondent No.1
...

CORAM : SACHIN S. DESHMUKH, J.

DATE : 12-09-2025

PER COURT:-

1. Heard learned counsel for the petitioner and the learned Assistant Public Prosecutor for respondent No.1.
2. Petitioner raises challenge is confined to clause 3(i) of the judgment and order rendered by the learned Additional Sessions Judge, Aurangabad, in Criminal Revision No.36 of 2022, dated 27.03.2023.
3. At the instance of the petitioner, Crime No.79 of 2021 is registered with Sillod City Police Station, District Aurangabad, for the offences punishable under Sections 420, 417 and 406 read with Section 34 of the Indian Penal Code. Pursuant thereto, arrest of the accused was effected by the concerned Investigating Officer and was produced before the learned Judicial Magistrate First Class, Sillod, District Aurangabad.

4. During the course of the investigation, an amount of Rs.3,84,155/- was recovered from the accused person. Preceded by same, the petitioner presented Criminal Miscellaneous Application No.459 of 2021 before the learned Judicial Magistrate First Class, Sillod, under Section 457 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") seeking interim custody of the amount seized. The learned Judicial Magistrate rejected the application.

5. Raising challenge to the same, the petitioner preferred Criminal Revision No.36 of 2022. Learned Additional Sessions Judge, Aurangabad allowed the criminal revision application by setting aside the order of the learned Judicial Magistrate. However, a stipulation in sub-clause (i) of clause (3) of the impugned order, it was directed that the Incharge Officer of Sillod City Police Station shall handover the interim custody of seized amount of Rs.3,84,155/- upon furnishing bank guarantee in the like amount till conclusion of the trial.

6. As such, the petitioner has assailed aforesaid stipulation mandating furnishing of bank guarantee.

7. The learned counsel for the petitioner contends that the procedure as laid down in relation to the currency notes as has been laid down by the Honourable Apex Court in the case of ***Sundarbhai Ambalal Desai versus State of Gujarat, 2003***

AIR SC 638, while exercising the power under Section 451 of the Cr.P.C. is not adhered with. The appropriate procedure, was to prepare detailed panchnama of the seized currency notes, supported by photographs and then release property upon adequate security instead of insisting bank security. As such, impugned stipulation incorporated in the order deserves to be quashed and set aside and same may be modified as laid down by the Honourable Apex Court in the aforesaid case.

8. Per contra, the learned A.P.P. supported the impugned order and prayed for dismissal of the petition.

9. Having heard the learned counsel for the litigating sides and considering the principles laid down by the Honourable Apex Court in the case of **Sundarbhai** (supra) and judgment of this Court. In the case of **Writer Business Services Private Limited versus State of Maharashtra and others, 2021 All M R (Cri.) 4199**, wherein the observations made by the Honourable Supreme Court have been reproduced as under:-

"9. The Hon'ble Supreme Court in the case of Sunderbhai Ambalal Desai Vs. State of Gujarat, reported in (2002) 10 Supreme Court Cases 283, in paragraph No. 7, 10, 12, 13 & 14 has held as under :-

"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 the 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 chance of tampering with the articles.*

10. To avoid such a situation, in our view, powers under Section 451 Cr.P.C. should be exercised promptly and at the earliest. Valuable Articles and Currency Notes.

11. With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, Magistrate should pass appropriate orders as contemplated under Section 451 Cr.P.C. at the earliest.

12. For this purposes, 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 would be produced if required at the time of trial; and*
- (3) after taking proper security.*

13. For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the Court under Section 451 Cr.P.C. to impose any other appropriate condition.

14. In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the Court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in police custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the Court may direct that such articles be handed back to the Investigating Officer for further investigation and identification. However, in no set of circumstances, the Investigating Officer should keep such articles in custody for a longer period for the purposes of investigation and identification. For currency notes, similar procedure can be followed."

10. In view of the above directions issued by the Hon'ble Supreme Court in the case of *Sunderbhai Ambalal Desai (supra)*, the said amount seized/recovered by the police from the respondent Nos.2 to 4 during the course of investigation can be returned to the Petitioner, subject to condition that the Petitioner at its own cost will take colour photographs of the said cash amount. A detailed description of the said cash amount is given in tabular form in para no.7 of the Application

dated 1st March 2021 filed before the Trial Court (page nos.79 & 80 to the Petition). The said photographs of the cash amount will be produced before the Trial Court at the time of trial."

10. Thus, this Court finds that the contentions raised by the petitioner are supported by the statement of law declared by the Honourable Apex Court and followed by this Court, in the case of **Writer Business Services Private Limited** (*supra*), in the light of the aforesaid directions issued by the Honourable Apex Court and applying the ratio, the amount seized by the police from the accused during the course of investigation can be returned to the petitioner, subject to condition that the petitioner at its own cost will take the colour photographs of the said cash amount. A detailed description of the said cash amount along with specifying denomination of currency notes in a tabular form and to be filed before the trial Court. The photographs of the cash amount shall be produced before the trial Court at the time of trial.

11. Accordingly, the following order:-

- (i) The impugned judgment and order by the learned Additional Sessions Judge, Aurangabad, in Criminal Revision No.36 of 2022, dated 27.03.2023, to the extent of clause 3[i] of the order, is hereby quashed and set-aside.
- (ii) The Investigating Officer, Sillod City Police Station, District Aurangabad, is hereby directed to return cash amount of Rs.3,84,155/- to the petitioner. Upon the petitioner furnishing

an indemnity bond before the Trial Court undertaking that, in case, at the end of trial if the Trial Court directs, the petitioner will deposit the said amount.

- (iii) The Investigating Officer shall take colour photographs of all the seized currency notes and the one set of which shall be filed before the Trial Court, so also one set before the concerned police station with which present crime is registered. Petitioner shall also retain one set of colour photographs of all currency notes for the purpose of trial and petitioner shall bear the cost of same.

12. The criminal writ petition is allowed in above terms.

[SACHIN S. DESHMUKH, J.]
JUDGE

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