



(1)

30criwp345.25

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 345 OF 2025

SANJAY @ BHATU RAMESH KANADE

.....Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

.....Respondent

WITH

**CRIMINAL WRIT PETITION NO. 346 OF 2025 WITH
CRIMINAL WRIT PETITION NO. 356 OF 2025 WITH
CRIMINAL WRIT PETITION NO. 358 OF 2025 WITH
CRIMINAL WRIT PETITION NO. 359 OF 2025 WITH
CRIMINAL WRIT PETITION NO. 463 OF 2025 WITH
CRIMINAL WRIT PETITION NO. 509 OF 2025**

Mr. C. C. Deshpande, Advocate for the petitioners in all except wp/509/2025

Mr. A. A. Pawar, Advocate h/f Mr. S. S. Ghodke, Advocate for the petitioner in wp/509/2025

Mr. N. L. Choudhari, Advocate for the respondent No.2

CORAM : KISHORE C. SANT, J.

DATE : 26th JUNE, 2025

P. C.

1. This group of petitions is arising out of the order challenging the separate orders dated 15-10-2024 passed by the

learned Special Judge, Dhule rejecting the respective applications of respective petitioners under section 451 and 457 of the Cr. P. C. The petitioners had applied for returned of their gold ornaments found and seized from the locker of accused No.1 namely Rajendra Bamb in the bank. It is the case of the petitioners that their ornaments were pledge with accused No.1 and accused No. 1 kept those in the locker by putting tag on the pocket of respective petitioners.

One FIR came to be filed by one Jayesh Dusane against Rajendra Bamb alleging that he is involved in the business of illegal money lending transaction. The police, on the basis of it, registered the offence and filed charge-sheet after investigation. On that basis, special case No. 141/2022 is pending in the Sessions Court, Dhule. The allegations are also under sections 409, 406, 420, 465, 467, 468, 384 and 120 (b) read with section 34 of the IPC and 3 & 4 of the Maharashtra Money Lenders (Regulation) Act and Sections 21, 22, 23 and 25 of the Banning of Unregulated Deposit Schemes Act, 2019. In

connection with the offence, the locker and bank account of accused No.1 came to be seized by the Investigating Officer. Now, those are also seized by the Income Tax Department. In the court, similarly situated persons like present petitioners filed applications under section 451 of the Cr. P. C. for return of their gold ornaments. Said applications were allowed. Accused No.1 had even challenged the said orders by filing criminal revision application in this court bearing Criminal Revision Application No. 329/2023 alongwith other Criminal Revisions applications. This court by common order dated 19-08-2024, rejected those revisions. It is observed by this court that gold ornaments are not claimed by any other persons and the accused. It is accepted even by accused No.1 those gold ornaments were pledged with the accused No.1. This court thus confirmed the order. Para 6 of the said order reads below

“6. Perused the impugned orders. Admittedly, the petitioner did not claim the title over the property which was released to respondent No.2. Section 451 of Cr. P. C., enabling the Magistrate to pass the order of releasing the property pending the trial. The Magistrate has to satisfy that the person claiming for interim custody has title over the said property or who has a better title. Recovery of the property from the applicant in numerous bags with the name tags of

respondents corroborates the allegations of illegal money lending. The petitioner did not claim the title over the seized property. So, the learned Additional Sessions Judge correctly drew the inference that those are the properties belong to the respondent Nos. 2, and they are entitled to received temporary custody under section 451 of CR. P. C. Granting property under section 451 of Cr. P. C. does not determine the rights of the parties to such applications. At the time of the conclusion of the trial, the court has to pass the final order of the custody of the property claimed under section 452 of Cr. P. C. That stage is yet to come. The impugned orders are free from illegality and perversity. There is no substance in the applications. Hence, all applications stand dismissed. No order as to costs."

2. The learned advocate for the petitioners thus submits that it is only thereafter the applications were rejected mainly on the ground that a letter was issued by Income Tax Department, Nagpur to the Registrar of the Court and only on that ground custody is refused.

3. The learned APP vehemently opposed the petitions. He submits that the identity of the gold ornaments is difficult. It is therefore, difficult to come to a conclusion that the gold ornaments belonging to a particular applicant. He opposes the petitions on this ground.

4. From the impugned orders, it is seen that the court has mainly considered that there is a letter received by the court issued by the Income Tax Department showing that the property involved in the offence is unnamed (Benami) property and the owner is also unnamed (Benami). The property is also attached by the Income Tax Department. The ornaments are not perishable. So far as the identity is concerned, the court observed that it is only oral statement of the petitioner and accused No.1 that the gold ornaments belongs to the petitioners.

5. On going through the orders and the facts of the case, it is seen that there is no one else claimed ownership over the gold except the respective petitioners. The gold is found in the locker of accused No.1. Accused No.1 has put name of the respective petitioners on the tag containing the gold ornaments of the petitioners when the gold is found in the locker of accused No.1 and when accused No. 1 himself is not claiming ownership and accepts ownership of the respective petitioners,

this court finds that there should be no difficulty in accepting the statement of the petitioners that gold ornaments belongs to them. Now the chart is also filed. The purpose would not be served by keeping the gold ornaments as it is. A care can be taken by issuing necessary directions and by putting conditions. Hence, following order:

ORDER

a] The writ petitions stands allowed.

b] The impugned orders dated 15-10-2024 mentioned below are quashed and set aside:

Sr. No.	Date	Particular	Exh.
1.	15-10-2024	Criminal Misc. Application No.31/2024	1
2.	15-10-2024	Special Case No. 141/2022	93
3.	15-10-2024	Special Case No.141/2022	96
4.	15-10-2024	Special Case No.141/2022	35
5.	15-10-2024	Criminal Misc. Application No.30/2024	1
6.	15-10-2024	Criminal Misc. Application No.49/2024	01
7.	15-10-2024	Criminal Misc. Application No.32/2024	1

c] The petitioners shall be handed over the gold ornaments as prayed for in the applications.

d] The petitioners shall give undertaking containing that they shall not create any third party interest and shall not give custody to any other persons. They shall not change nature of the gold ornaments and also furnish indemnity bond.

e] They shall produce the said gold ornaments whenever directed by the court during the course of the trial.

f] It is made clear that the learned court may pass appropriate order at the conclusion of the trial, if the court comes to a conclusion about the ownership of the gold ornaments.

g] With this, the criminal writ petitions stands disposed off.

[KISHORE C. SANT, J.]