IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4810 OF 2025

Mrs. Darshana Ajay Gupta
Aged: 50 yrs, Occu: Business,
R/at: Flat No.202, 2nd Floor, Hari Nivas building
S. V. Road, Khar (W), Mumbai - 400 052 ...Petitioner

Versus

1. The Central Bureau of Investigation
   (Through CBI SCB, Mumbai
   Vide C.R. No.RCO572019S0004)
2. The State of Maharashtra ... Respondents

Mr. Niranjan Mundargi i/by Ms. Keral Mehta, for the Petitioner.
Mr. Amit Munde a/w Jai Vohra, for the Respondent No.1-CBI.
Mr. Yogesh Nakhwa, APP for the Respondent No.2-State.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 21st NOVEMBER, 2025
PRONOUNCED ON : 28th NOVEMBER, 2025

<u>JUDGMENT :-</u>

1. Present Petition assailed the legality of three Orders. The 1st Order is dated 02/12/2021, passed by the 3rd Court of the learned Additional Chief Metropolitan Magistrate, Esplanade, Mumbai in Miscellaneous Application No.104 of 2021, thereby the said Misc. Appln. seeking de-freezing of certain lockers to access it and return of the seized Fixed Deposit receipt, was rejected. The 2nd Order is dated 15/01/2025, passed by the Court of the learned Additional Chief Judicial Magistrate in Misc. Appln. No.3797 of 2024, thereby the said Misc. Appln. seeking same relief came to be rejected. The 3rd Order is dated 17/07/2025, passed by the learned Special Judge (CBI), City Civil and Sessions Court, Greater Mumbai whereby the

Special Judge rejected the Criminal Revision Application No.292 of 2025 assailing the first and the second Order referred above. Respondent No.1 filed a reply and opposed the Petition.

2. Heard Mr. Mundargi, the learned Counsel for the Petitioner, Mr. Munde, learned Counsel for Respondent No.1-CBI and Mr. Nakhwa, the learned APP for Respondent No.2-State. Perused the Revision and the documents enclosed.

3. The facts giving rise to this Petition are that, Mr Ajay Gupta is husband of the Petitioner. On 04/11/2019, Respondent No.1 registered an F.I.R. bearing C.R. No.RC0572019S0004, for the offences punishable under Sections 403, 420, 468 and 471 r/w 120 of the Indian Penal Code, 1860 and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 against Ajay Gupta and others.

4. The prosecution case is that M/s Krishna Knitwear Technology Ltd. had cheated the Canara Bank by dishonestly submitting false and fabricated documents of the stocks to the lead bank, *i.e.*, Andhra Bank and thereby availed the higher drawing power under the Open Cash Credit limit (OCC). The said offence of cheating etc. was committed pursuant to the Criminal conspiracy designed by all the accused persons.

5. During the course of investigation, on 05/11/2019, search was conducted at the office and residential premises of the accused persons named in the F.I.R. including the husband of the Petitioner. The Locker No.1240 maintained with Bank of Baroda, Khar (W) Mumbai was also searched in which the Respondent No.1 found gold ornaments having gross weight of 1245.990 gms. worth Rs.31,49,083/- and 11 FDR's worth Rs.4,41,748/-, in the name of Ajay Gupta and his family members including the Petitioner. The gold ornaments were kept in the locker.

However, the FDR's were taken taken into custody of Respondent No.1. It is stated that another Locker No.676 with Karnataka Bank Ltd., Bandra West, Mumbai was also searched in which Respondent No.1 found cash worth Rs.32,000/- and gold ornaments having gross weight of 302.570 gms. worth of Rs.07,39,840/-. That, separate written instruction has been given to the respective Bank Manager by Respondent No.1 to stop the operation of the said Locker Nos.1240 & 676 till the further instructions from Respondent No.1 or the orders from the competent Court.

6. Investigation revealed that, Ajay Gupta was Director of M/s Krishna Knitwear Technology Ltd., from 08/02/2002 to 14/12/2012. From 2008 to 2011 the bank funds were diverted from CC accounts of M/s Krishna and credited into the accounts of various shell companies but, without doing genuine business. It is alleged that pursuant to the criminal conspiracy with an intent to cheat the bank, a request for restructuring of the debts was submitted and the funds were diverted to the shell companies, and later on the said funds were used for the purpose other than for which the funds were sanctioned and disbursed. On completion of investigation, Respondent No.1 filed charge-sheet against Ajay Gupta and his co-accused on 30/12/2020. After further investigation, Respondent No.1 submitted a supplementary charge-sheet on 22/06/2022 against other accused.

7. Mr. Mundargi, learned Counsel for the Petitioner submitted that, the Petitioner is a business woman. Since 2000 she has been running a proprietorship firm namely "M/s Space Agents", which business she has succeeded after her father-in-law. The Petitioner has been assessed to Income-tax for the revenue generated out of the said business. Pointing the Income-tax returns alongwith Balance-Sheets of the Petitioner and her husband Ajay Gupta for the period 2002 to 2023 and also the Balance-Sheets of Petitioner's father-in-law, Mr. Mundargi submitted that the gold ornaments lying in the said lockers is ancestral property of the Petitioner and having been part of the family for several generations. It is her exclusive and rightful property. Mr. Mundargi submitted that, the said lockers have been held in the joint name of the Petitioner and her husband.

Therefore, the Petitioner filed the Misc. Appln. No.104/2021 seeking de-freezing of the said lockers. However, that Appln. was rejected by the 1st impugned Order holding that there is no material on record to show that the jewellery is the ancestral property and *stridhan* of the Petitioner. Certain fixed deposit receipts are in the name of the husband of the Petitioner. Therefore, *prima facie* the ornaments and the fixed deposits might be proceeds of the crime. Investigation of the crime is in process.

Thereafter investigation was completed and the supplementary charge-sheet came to be filed. Hence, the Petitioner filed another Application being Misc.Appln.3797/2024 seeking de-freezing of the lockers, which was rejected by the 2nd impugned Order holding that the jewellery shown in the Income Tax Returns from 2002 to 2023 is 95 *Tolas*, then worth Rs.9,500/-. Whereas the ornaments lying in the lockers are weighing 1548.56 grams. The IT Returns do not mention that it has been a gold jewellery. There are no receipts of purchasing the gold jewellery. Therefore, it cannot be held that the jewellery is the ancestral property and *stridhan* of the Petitioner. There is no evidence that the fixed deposits and the cash are from their independent income. The Petitioner has not challenged the 1st impugned Order, which had attained finality. As such, considering the Misc.Appln.3797/2024 would amount to review of the 1st impugned Order. On this premise and considering the allegations of causing wrongful loss of more than Rs.27 Crores to the said Bank, the Appln. came to be rejected by the 2nd impugned Order. In the wake of above, the Petitioner filed the said Revision assailing the said two Orders. However, the learned Special Judge rejected the revision by the impugned

Order dated 17/07/2025 on the same ground of maintainability of the the Misc.Appln.3797/2024.

Mr. Mundargi submitted that since the ancestral jewellery of total 160 *Tolas* and the income of the Petitioner and her husband have been declared in their IT Returns, the trial Court had no reason to disbelieve the claim of the Petitioner holding that the property in question is 'proceeds of the crime'. As such, said observation/finding is erroneous. Therefore, all the Orders are illegal and liable to be quashed and set aside and the lockers may be de-freezed on reasonable/necessary conditions.

8. In reply, Mr. Munde, the learned Counsel for Respondent No.1 submitted that Mr. Ajay Gupta and the other accused persons with the help of forged and fabricated documents opened the shell companies and misappropriated the bank funds. Said public money then used for the purpose other than for which it was availed. In so far as, the ornaments are concerned, Mr. Munde submitted that not a single bill is produced by the Petitioner or her husband to show that if not all at least some jewellery articles were purchased by them. As such, it is apparent that the seized ornaments etc. are 'proceeds of the crime'. Therefore, the same may not be released as the husband of the Petitioner and the co-accused did not refund the bank money availed by them.

9. I have considered the rival submissions and perused the documents enclosed with the Petition.

10. Though, the learned Counsel for the Petitioner tried to demonstrate that the gold ornaments in question is ancestral property of the Petitioner and her family, not a single bill related to the purchase of any of the gold ornaments is produced on record. As shown in the Balance-Sheet of the Petitioner's father-in-law, as on 31/03/2002, he had 65 *Tolas* of ancestral jewellery. But according to the Petitioner's Balances-Sheet as on 31/03/2003, she had 95 *Tolas* of ancestral jewellery. Again 65 *Tolas* of ancestral jewellery is shown in the Balance-Sheet of her father-in-law as on 31/03/2004. That apart, as shown in the Balance-Sheet of the Petitioner's husband, as on 31/03/2002, her husband had 75 *Tolas* of ancestral jewellery. The Petition is silent about the source through which it is succeeded by the Petitioner's husband. The jewellery allegedly succeeded by the Petitioner from her father-in-law and shown in her husband's name is more than 65 *Tolas* of ancestral jewellery. Thus, the weight of ancestral jewellery is not matching with the weight of the jewellery lying in the lockers. The Balance-Sheets in the name of the Petitioner's father-in-law, as referred above, are not bearing dates of its preparation nor the signature of the Chartered Accountant concerned who verified it.

11. The material on record indicates that the fraud is involving more than Rs.27 Crores. It is apparent that the offence has been committed very strategically. The way in which this crime is committed has deprived the bank of the money it was holding in trust of other customers. Needless to state that crimes of such nature chokes the economy of the Nation.

12. However, it is understandable that if an ancestral gold jewellery is very old, one may not be able to produce its bill. As per the Circular issued by CBDT, there is a prescribed limit on the quantity of gold jewellery and ornaments that different persons can hold without requiring to explain and source of such gold. For married woman, the prescribed gold holding limit is 500 grams. Instruction No. 1916, dated May 11, 1994, issued by the Central Board Direct Tax reads:

> "Instances of seizure of jewellery of small quantity in course of operations under section 132 have come to the notice of the Board. The question of a common approach to situations where search parties come across items of jewellery, has been

> examined by the Board and following guidelines are issued for strict compliance.
>
> (i) In the case of a wealth-tax assessee, gold jewellery and ornaments found in excess of the gross weight declared in the wealth-tax return only need be seized.
>
> (ii) In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 gms per married lady, 250 gms. per unmarried lady and 100 gms. per male member of the family need not be seized.
>
> (iii) The authorized officer may, having regard to the status of the family, and the custom and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure. This should be reported to the Director of Income-tax/Commissioner authorising the search at the time of furnishing the search report.
>
> (iv) In all cases, a detailed inventory of the jewellery and ornaments found must be prepared to be used for assessment purposes."

13. It is common experience that at the time of wedding, the daughter/daughter-in-law receives gold ornaments jewellery and other goods not only from parental side but in-laws side. Notice also can be taken of the fact that thereafter also she receive some small items from friends and close relatives of both sides on occasions like birth-day etc. Therefore, it is probable that the CBDT has came out with this Circular.

In the wake of above, it can be accepted that the Petitioner and her family had some ancestral jewellery and that, some part of the jewellery in question is "*Stridhan*" of the Petitioner. Therefore, I am not in agreement with the findings recorded by the learned Metropolitan Magistrate that the entire jewellery in question might be the proceeds of the crime. Admittedly, both the lockers are in the joint name of the Petitioner and her husband. Therefore, I find no difficulty in releasing some gold jewellery but weighing 500 grams out of the total gold jewellery lying in both the freezed lockers. However, it is difficult to decide as to which gold jewellery items can be returned in the interim custody because the release of the jewellery is depending on its use. Therefore, I deem it proper to let the Petitioner select the permissible gold jewellery items weighing 500 grams, as stated above, to give it in her interim custody.

14. In so far as the question of releasing the FDRs and the cash of Rs.32,000/- is concerned, looking at the income shown in the Income Tax Returns of the Petitioner and her husband, I am in agreement with the learned Counsel Mr Mundargi that *prima facie* it is the property of the Petitioner, her husband and family. Therefore, the same can be release in the interim custody of the Petitioner. The 1st impugned Order was not challenged in the higher Court. Thereafter, the supplementary charge-sheet was filed. It was followed by the 2nd Misc. Appln. for release of the property filed by the Petitioner.

15. As a result, the 2nd and 3rd impugned Orders need an interference to allow the Petitioner to get an interim custody of the jewellery weighing 500 grams and the Fixed Deposit Receipts. Petition deserves to be partly allowed, accordingly. Hence, following Order is passed:

16. Petition is partly allowed.

16.1 The 2nd and 3rd impugned Orders are set aside.

16.2 Miscellaneous Application No.3797 of 2024 filed by the Petitioner before 3rd Court of the learned Additional Chief Judicial Magistrate, Esplanade, Mumbai, is partly allowed.

16.3 The Respondent No.1-CBI shall de-freeze the aforesaid Locker No. 1240 at Bank of Baroda, Khar West, Mumbai and Locker No. 676 at Karnataka Bank Ltd, Bandra West, Mumbai.

16.4 The Petitioner is allowed to select the gold jewellery items weighing 500 grams from the jewellery items lying in the aforestated freezed lockers. Rest of the jewellery items shall be retained in the said lockers until further Orders of the Court concerned.

16.5 On selection of the gold jewellery items weighing 500 grams by the Petitioner as permitted above, Respondent No.1 shall allow the Petitioner to keep the selected 500 gram jewellery in her interim custody until further Orders passed by the trial Court.

16.6 The seized Fixed Deposit Receipts and the cash of Rs.32,000/- shall be released in the interim custody of the Petitioner by Respondent No.1. The Fixed Deposit Receipts are permitted to be renewed from time to time, until further Orders of the Court concerned.

16.7 The aforesaid interim custody of the gold jewellery items weighing 500 grams and Fixed Deposit Receipts is subject to following conditions.

a) The Petitioner shall execute an Indemnity Bond in the sum of Rs.75,00,000/- with one or two sureties in the like amount with an under taking to produce the same before the trial Court as and when required to do so.

b) Before releasing the selected gold jewellery items weighing 500 grams, Respondent No.1 shall record necessary Panchanama and take sufficient photos of the said jewellery and obtain signature of the Petitioner thereon.

c) One copy of the Panchnama and the photos shall be given to the Petitioner which she and her LRs shall not dispute in the future.

d) The Petitioner shall not sale, gift, transfer, permit others to use or change the nature of the gold jewellery items weighing 500 grams to be returned in her interim custody. Nor this jewellery shall be open for succession unless permitted by the trial/competent Court, as the case may be.

e) Petitioner shall always keep the 500 grams jewellery and the Fixed Deposit Receipts in safety.

f) This Order shall be binding on the Petitioner, her husband Mr Ajay Gupta and their LRs, who shall also sign the Indemnity Bond towards the knowledge of this Order.

g) If the Petitioner or her LRs fail to produce the said 500 grams jewellery or any part thereof and the Fixed Deposit Receipts as directed by the Court concerned, they shall be liable to pay its prevalent market value/maturity amount at the time of passing the said direction by that Court.

17. The prayers in the Petition are made absolute in aforesaid terms.

(SHYAM C. CHANDAK, J.)