

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Application No.939 of 2025

Titan Company Limited
V/s.

.... Applicant

The State of Maharashtra

... Respondent

Sheroy M. Bodhanwalla, counsel a/w.Sayali Puri a/w. Akash Singh a/w.Shreyas Thakur i/b.M.S. Bodhanwalla & co.	Advocates for the Applicant.
Mr. H.J. Dedhia	APP for the State.
PSI, Nitin Kamble	PSI, Amboli Police Station present.

CORAM : S.M. MODAK, J

DATE : 4th September 2025.

P.C. :

Heard learned Advocate Shri Bodhanwalla, learned counsel for the Applicant-company.

2. One Paresh N. Patel who is the Manager of the Applicant company lodged complaint with Amboli Police Station on 23rd August 2022 in respect of theft committed in their shop situated at Andheri (W), Mumbai. This complaint was lodged against three unknown persons. It was for an offence under Section 380 r/w 34 of Indian Penal Code. The gold ornaments and diamond ornaments

valuing Rs.2,41,92,660/- were stolen. During investigation police have seized certain ornaments at the instance of arrested accused. The Memorandum Panchnama is dated 24th August 2022. The description of seized ornaments is also given at Page No.51 and 52. The valuation mentioned is Rs.2,41,92,660/-. Already there is a chargesheet filed against one Brijesh Bariyya. Now the case is pending before the Court of JMFC, Andheri.

3. During the pendency of this criminal case the Petitioner applied for return of these seized ornaments and learned Magistrate as per the order dated 21st September 2022 has granted interim custody of the ornaments described in direction No.2 of the said order at Page-72. The relevant conditions are as follows:

“4. The applicant is hereby directed not to sell, change, transfer, or exchange the said property in any manner to anybody till the disposal of the case.

5. The applicant is hereby directed to produce the said property before the Court as and when required and ordered by this Court.”

4. The Applicant applied for grant of permission to sell those ornaments before the learned Magistrate. It is rejected vide the order dated 23rd May 2025 (Page-116). Primarily it is rejected on following grounds:-

- (i) The representative who applied for interim custody was different from the Applicant Israr Ahmesh Shaikh.

He relied upon the observations in case of *Associated Cement Co. Ltd. v/s. Keshvanand*¹. According to Mr. Bodhanwalla, the Petitioner is an artificial entity and the representative goes on changing and application was filed by authorized representative at that time.

- (ii) If the Petitioner is allowed to sell those ornaments, during trial the prosecution will not get an opportunity to identify the ornaments.

5. To rebut this observation, he relied upon following judgments:

- (i) Sunder Bhai Ambalal Desai vs. State of Gujarat²
- (ii) Suresh Serve vs. State of Kerala³
- (iii) Lenovo India Pvt. Ltd. vs. The State rep by Inspector of Police⁴
- (iv) K.V. Ganapathy vs. State of Karnataka⁵
- (v) Additionally he relied upon following two orders:
 - (i) The order dated 21st September 2022 passed in Criminal Application No.984/2021 wherein the present Petitioner is the Applicant. This was also for interim custody of valuable jewellery.

1 (1998) 1 Supreme Court Cases 687

2 2022 SCC OnLine Del 1466

3 2020 SCC OnLine Ker 1730

4 2013 SCC OnLine Mad 3461

5 2002 SCC OnLine Kar 320

(ii) He relied upon the observations of Hon'ble Supreme Court in the case of *Titan Company Ltd. v/s. State of Maharashtra and anr.*⁶ (Page-146) and more specifically Direction No.7(b).

6. His contention is on one hand the ornaments can be permitted to be sold and on the other hand the interest of the prosecution can be secured by taking photographs and doing videography. It is true when the learned Magistrate granted interim custody on 21st September 2022 has directed to take all the details i.e. photographs, description, etc. whichever is necessary by Condition No.3. However, for want of instructions Mr. Bodhanwalla is unable to submit that those photographs were taken. If photographs and videography is done, learned APP is conscious that the prosecution will not be denied an opportunity to prove the identity of those ornaments during trial.

Evidentiary value of Ornaments

7. It is true one cannot say when the trial will be over. It is true these seized ornaments is a part of evidence which falls within the category of muddemal. It is true in order to prove the guilt of the accused the prosecution need to prove the connection in between the ornaments which were stolen and the ornaments which were seized. Through the evidence of the first informant and other witnesses and documents, the identity of stolen ornaments can be proved. The

6 Criminal Appeal No.3105 of 2023

identity of stolen ornaments can be proved by producing those ornaments and by proving the documents in connection with the seizure of the ornaments.

8. It is very well true the Hon'ble Supreme Court has also clarified that no purpose will be served by granting interim custody by putting a condition to produce them whenever required. Hon'ble Supreme Court is conscious of the delay caused in conduct of the trial and that is why there are observations to take photographs and videography. This arrangement can also be done in the present case.

9. It is true the Petitioner is an artificial entity and it works through natural person. The representative who has appeared before the Court at the time of interim custody is different from the Applicant who has applied for grant of permission to sell ornaments. What is sufficient is there is authorization on behalf of the Petitioner to the said representative. Let Learned Advocate for the Applicant vouch that due authorization was filed before the learned Magistrate.

Modification of Condition

10. To support this contention learned Advocate relied upon the observations in case of *Sandeep Singh v/s. State of NCT of Delhi & another*⁷, more specifically Para No.15. There is observations that power to modify order under Section 451 is inherent in the provision as the purpose is only safe custody and production during trial. It is true when the interim custody is granted with condition to produce

⁷ 2022 SCC OnLine Del 1466

those ornaments, it does not mean that the said condition cannot be modified. After passing of the first order on 21st September 2022 fresh application was moved before the trial Court after the expiry of three years. The fact that yet the first informant is not called for giving evidence after the period of three years is sufficient for the Petitioner to apply for grant of sale permission. I am inclined to allow the Petition.

Fresh Condition

11. It is true while granting interim custody, the Petitioner was directed to execute the indemnity bond for Rs.2,41,92,660/-. If the ornaments will be sold, they cannot be produced in the Court. So such indemnity bond will become redundant. Instead of that the Petitioner can be asked to furnish indemnity bond to the effect that he will deposit amount of Rs. 2,41,92,660/- in the trial Court if desired. Because one cannot foresee what will be the situation in future before the trial Court. No doubt while granting interim custody the learned Magistrate has heard the accused also. In the interest of justice the direction can be given to execute fresh indemnity bond. At the same time the photograph and videography is required. In view of that following order is passed:

ORDER

- 1) The Writ Petition is allowed.
- 2) The order dated 23rd May 2025 passed by the Court of JMFC,

Andheri in CC No. 616/N/2025 is set aside.

3) The Petitioner is permitted to sell the ornaments (consisting of gold and diamonds whose description is given in the order dated 21st September 2022 passed by the learned Metropolitan Magistrate, Andheri (It consist of golden earrings, diamond earrings and golden pendant) subject to following conditions:-

- (i) The Petitioner to take photographs of all these ornaments.
- (ii) Let this exercise be done in the presence of any officer from Amboli Police Station and in the presence of two panchas.
- (iii) The Petitioner is directed to do videography of this exercise and to store it in a pen-drive and hand over that pen-drive to police.
- (iv) The concerned Police officer is directed to prepare panchnama about happening of this photography and videography.
- (v) The Amboli Police Station is directed to hand over this panchnama and a pen-drive to the concerned Court of Magistrate so that it will be used at the time of trial.
- (vi) The Petitioner is directed to execute indemnity bond that he will deposit an amount of Rs. 2,41,92,660/- (Rupees Two Crores, Forty One Lacs, Ninety Two

Thousand, Six Hundred and Sixty Only) in the Court, if directed in future. If the Court feels to issue necessary directions, the Court is directed to hear the Petitioner.

(S.M. MODAK, J.)