



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 838 OF 2025

Saurabh s/o Madhusudan Thakre

Vs.

State of Maharashtra, Thru. PS Hudkeshwar, Nagpur and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms. Aditi Mangesh Majumdar, Advocate for petitioner.
Mr. A.M. Joshi, APP for respondent No.1/State.

CORAM : M.M. NERLIKAR, J.

DATE : 26.11.2025

Heard the learned counsel for the petitioner
as well as the learned APP for the respondent No.1/State.

2. The writ petition challenges the order dated 19.10.2024 passed by the learned Judicial Magistrate First Class, Nagpur, at Exhibit 38 in R.C.C. No.300276/2015 and the order dated 15.04.2025 passed by the learned Additional Sessions Judge, Nagpur in Criminal Revision No.273/2024, wherein the application at Exhibit 38 filed by the petitioner was rejected.

3. The application at Exhibit 38 was filed by the petitioner for getting custody of the gold ingot weighing 55 grams gold which was seized in Crime No.321/2014 on

Suprutnama. The Crime No.321/2024 was registered for offence under Sections 380 and 411 of the Indian Penal Code. It is the contention of the petitioner that a theft was committed in his house on 23.11.2014 and in that theft gold ornaments weighing about 67 grams were stolen along with cash amount. During investigation, the Investigating Officer seized 55 grams of gold ingot from the accused person which were found to be converted by the accused from the stolen property of the petitioner.

4. The learned counsel appearing for the petitioner submits that admittedly the gold ornaments were stolen by the accused and the same was converted into ingot and therefore, the petitioner is the owner of the said ingot, which could be gathered from the papers of investigation. She further submits that the vehicle which was seized during the investigation was released on Suprutnama and therefore, she submits that the ingot may also be released on Suprutnama. She relied on the judgment of the Hon'ble Supreme Court in the case of ***Sunderbhai Ambalal Desai Vs. State of Gujrat*** reported in ***2002 (10) SCC 283***, the Hon'ble Supreme Court in para 7 has observed as under:-

“7. In our view, the powers under Section 451 CrPC 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”.

And therefore, lastly prayed that she is ready to give undertaking that she will not convert it into jewellery and she will keep it in the safe custody.

5. On the other hand, the learned APP submits that, before the Trial Court the Investigating Officer as well as the learned APP has given no objection for releasing of the gold ingot. He submits that as the petitioner is the owner of the jewellery and the ingot was seized from the accused person and to that effect the statement of goldsmith was recorded, wherein it was revealed that the jewellery which is of the petitioner was converted into ingot. Lastly, he submitted that he has no objection to release the gold ingot.

6. Upon hearing the learned counsel appearing for the petitioner as well as the learned APP, admittedly, it appears that the Crime No.321 of 2014 was registered in Police Station Hudkeshwar, Nagpur. During the course of investigation, the gold ingot was seized from the accused person. Admittedly, the gold jewellery is converted into ingot and the statement of the goldsmith to that effect was recorded.

7. Considering the above factual background, it appears from the record that several times applications were made, however, the applications for release of gold ingot were rejected by the trial Court on the ground that the first application preferred for release of gold ingot was rejected on 26.08.2016 by passing the order at Exhibit 9. The applications were rejected on the ground of mismatch in the weight as the gold ornaments were of 67 grams, however, the ingot is of 55 grams. The ground on which the applications were rejected is not sound for the reason that admittedly, the jewellery was converted into ingot and the Trial Court ought to have considered the fact that petitioner is the owner and one does not know when the trial would conclude. Admittedly, jewellery was converted into ingot. However, the Trial Court has given much importance to the discrepancy in the weight. Considering the admitted fact, that the petitioner is the owner of the gold jewellery which was converted into ingot, he cannot

be deprived of his right over the said gold ingot. The Hon'ble Supreme Court in the case of ***Sunderbhai Ambalal Desai, Vs. State of Gujrat*** (supra) in para 11 has observed as under:-

“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, the Magistrate should pass appropriate orders as contemplated under Section 451 of CRPC at the earliest”.

8. Considering the ratio laid down by the Supreme Court it was the duty of the Trial Court to consider the release of the gold ingot from all angles. Admittedly, the FIR was registered in the year 2014 and till today, the trial is not concluded on the contrary, the record shows that non bailable warrant was issued against the accused person and therefore, the case still seems to be unready.

9. It is a matter of right of the petitioner to have his property in his possession, depriving the same would tantamount to depriving his valuable right guaranteed under Article 300-A of the Constitution of India.

10. Even the Revisional Court has failed to take into consideration the above aspects of the matter.

Considering the admitted position that the petitioner is the owner of the gold jewellery which was stolen by the accused person from his house and which was converted into gold ingot, under such circumstances, I am inclined to grant the relief to the petitioner by passing the following order :

ORDER

- i) The Writ Petition is allowed.
- ii) The order passed by the Judicial Magistrate First Class, Nagpur vide Exh.38, in RCC No.300276 of 2015 dated 19.10.2024 and the order dated 15.04.2025 passed by the learned Additional Sessions Judge, Nagpur in Criminal Revision No.273/2024, are hereby quashed and set aside.

11. The petitioner shall be entitled to get gold ingot subject to giving indemnity bond of the amount of Rs.6,00,000/- (Rs. Six Lakhs).

12. Further following conditions are imposed : -

- (i) The petitioner shall not change the nature of the gold ingot.
- (ii) The petitioner is directed to produce the same ingot as and when called by the Trial Court during the trial.

(iii) The detailed panchnama while releasing the ingot shall be prepared showing the dimension, colour and the weight of the said ingot. Further the photographs shall be taken of the said ingot.

11. On the above observations, the writ petition stands disposed of.

(M.M. Nerlikar, J.)