

MHNG030023772002

R.C.C. No.30147/2002



State Vs Sunil Kedar & Ors

ORDER BELOW EXH.3636

1. The Applicant third party Mr. Sushil Daulal Daga has filed the present application seeking directions from this Court for opening Flats No.17/901, 902 and 903, NRI Complex, Phase-I, Nerul, Navi Mumbai, which are under seizure in connection with Crime No.101/2002, registered at Ganeshpeth Police Station, Nagpur. The limited relief sought is to permit opening of the said flats for the purpose of cleaning, repairing and pest control, on the ground that the condition of the flats has become unhygienic and has caused seepage, damage and nuisance to the Applicant's property and other residents.

2. The application is opposed by the State/Investigating Agency on the following grounds:

i) That the said flats belong to M/s. Home Trade Ltd., connected with Accused No.3, Sanjay Hariram Agrawal, whose trial is pending and other accused No.9 Nandkishor Shankarlal Trivedi who has already been convicted in the present case.

ii) That the property was seized during investigation for the purpose of recovery of large sums of public money involved in the offence.

iii) That an appeal filed by the convicted accused is pending

before the Hon'ble District Court, and the trial of the accused No.3 is still pending before this Court, because of separation of his trial.

iv) That permitting the opening of the sealed property may provide an opportunity to the convicted/accused persons to tamper with or destroy the property, thereby frustrating the object of seizure.

3. Accused No.3 filed his reply and has no objection to the present application.

4. I have heard the learned advocate for the Applicant as well as the learned APP for the State and accused No.3. Perused the record.

5. At the outset, it is not in dispute that the said flats form part of the property seized in the year 2002 during the investigation. Under Section 102 Cr.P.C., the Investigating Officer has the power to seize any property which may be alleged or suspected to have been stolen, or which may create suspicion of the commission of any offence. Once such a seizure is made, the custody and disposal of the property is governed by Sections 451 and 452 Cr.P.C.

6. In the present case, one of the accused i.e. No.9, namely Shri Nandkishore Trivedi has already been convicted, and his appeal is pending before the Hon'ble District Court. Further, the trial of accused No.3 is still pending before this Court. Thus, the seized property is still relevant and subject matter of proceedings, and cannot be interfered with except under express orders of the Hon'ble

Appellate Court at this stage under Section 451 Cr.P.C because of the fact that the appeal against conviction is pending before the Hon'ble Appellate Court against another accused, who is also co-owner of the flat.

7. The applicant's grievance of seepage, foul smell and unhygienic conditions affecting the building and occupants is genuine and requires consideration. However, the relief sought, i.e., opening the sealed flats, would amount to altering the present custody of the property seized by the Investigating Officer and would interfere with the judicial custody of the property, which this Court is not inclined to permit at this stage especially because of the pendency of the appeal and the Hon'ble appellate Court has also seized with the matter.

8. This Court is well aware about the health and safety issue and concerns raised by the applicant. However, the convicted accused No.9 has also right in the said property. He is not before this Court. After conviction of the accused No.9 he has already preferred appeal and it is pending before the Hon'ble Appellate Court. Therefore, now the jurisdiction of this court is limited to the extent of accused No.3 only. On the other hand the Hon'ble Appellate Court has authority to entertain application and here the convicted accused being co-owner of the said flat.

9. In view of the above discussion, I pass the following order.

ORDER

i) The application filed by the applicant Mr. Sushil Daulal Daga

for opening Flats No.17/901, 902 and 903, NRI Complex, Phase-I, Nerul, Navi Mumbai, for the purpose of cleaning and repairing is hereby rejected.

- ii) The Applicant is at liberty to approach the Hon'ble Appellate Court/District Court, where the appeal of the co-owner of the flat i.e. convicted co-accused No.9, is pending, for appropriate relief in accordance with law.
- iii) No order as to costs.

(Pronounced in open Court)

Nagpur.

Date : 21.08.2025

(A.M.Samant)
2nd Addl Chief Judicial Magistrate
(Spl. Court for S.138 N.I. Act),
Nagpur.