

C.C.No.183/N/2018
Azharuddin Shaikh -Vs- State.

ORDER BELOW EXH.1

1] The applicant filed this application for releasing one mobile phone, Model No.WC89051/Lenovo, bearing IMEI No.35895061153305 and 358959061153297, seized by BKC Police station, in crime no.334/2017, u/s 354(b), 500, 506, 507 of the Indian Penal Code.

2] The I.O. filed say and opposed the application. He submitted that, the applicant is accused in crime no.334/17. He uploaded details of the complainant on an obscure Website, due to which the complainant started getting obscene messages. It is alleged that the applicant used the above referred mobile in the commission of said crime. Hence, the same has been seized and sent for Forensic examination.

3] It is important to note that, investigation is still in progress. The applicant used the above referred mobile phone for the commission of offence. He created profile of complainant behind her back and uploaded her information thereon without her consent portraying that she is accessible for physical relationship. The said information is accessible to the public at large. The complainant started getting obscene messages. She lodged report against him. In course of investigation, it is revealed that, the applicant has created said profile. It seems that, the accused in this case used advanced technology for commission of crime. The information which the applicant uploaded, is stored in the said mobile phone. This information is important to establish the nexus of the accused with the crime. The record of his access to the internet and

uploading alleged information can be found in the mobile phone of the applicant. It is necessary to preserve the said information as it is a primary piece of evidence. It being a piece of electronic evidence, it is necessary to keep it intact as stored on the internal storage and memory card of the said mobile phone. If the said mobile phone is released in favour of the applicant, the applicant may delete the information or tamper with it so as to render it useless. He may make it useless from evidentiary point of view. The prosecution will be hampered in such a case. Even if the information and data stored on internal storage and memory card of said mobile phone is obtained on a secondary storage device, the data so obtained in the secondary storage device does not have the sanctity as primary evidence. It is the device on which said data is generated, is important from the point of evidence.

4] It is also worth to note that the said mobile hand set has been referred for Forensic Laboratory for examination. However, the examination has not been completed as is revealed from the say of I.O. Thus, considering all these circumstances, it will not be proper to release the said mobile phone in favour of the applicant. Hence, the following order :-

ORDER

The application is rejected.

(Pragati B. Yerlekar)
Metropolitan Magistrate,
71st Court, Bandra, Mumbai.

Date: 06-06-2018