

Criminal Revision Appl. No. 34/2022

Received on	11.10.2022
Registered on	11.10.2022
Decided on	17.11.2022
Duration	YY MM DD 00 00 27

IN THE COURT OF THE SESSIONS JUDGE, AMRELI.

CRIMINAL REVISION APPLICATION NO. 34/2022

Prakashbhai Deepakbhai Khimsuriya,
 Age : 23 years, Occup. : Labour work,
 Religion : Hindu,
 R/o. Nani Lakhavad, Tal. : Jasdan, Dist. : Rajkot.

.. .. **APPLICANT(REVISIONIST)****vs.**

The State.

.. .. **OPPONENT**

Subject :- Revision application filed u/s. 397 of the Code of Criminal Procedure.

Appearance :-

Learned Advocate Mr. U.B. Madhad for the Revisionist.

Learned A.P.P. M.R.Trivedi for the Opponent.

::JUDGMENT ::

1. By invoking the provisions of **Section 397 of the Code of Criminal Procedure**, the present revision application has been preferred by the applicant against the order passed by the Learned Magistrate of the Trial Court below the application filed by the applicant - accused **under Section 451 of the Cr.P.C.** for getting the interim custody of the

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muddamal; **Mobile Phone OPPO-AF-17 bearing IMEI No. 864991056953172** which has been taken into custody with respect to the offence registered at **Amreli Rural Police Station vide C.R.No. 11193004220347/2022** for the commission of offence **u/s. 379 & 114 of the I.P.C. alleged to have indulged in the theft of Battery Cells and the said application came to be rejected by the Ld. Trial Court with a reasoned order. Hence, being aggrieved and dissatisfied with the order, the present revision application.**

2. On being served with the process the Learned APP has appeared for the opponent and has defended the order passed by the Learned Magistrate of the Trial Court.

3. Learned Advocate Mr. U.B. Madhad has mainly relied on the reasons stated in the memo of application and has argued that the muddamal; **Mobile Phone OPPO-AF-17** is solely purchased and owned by the applicant and there is no need to withhold the Muddamal **Mobile Phone OPPO-AF-17 bearing IMEI No. 864991056953172** for a long period since it would create problems with regards to its safety. He has further submitted that the said mobile phone is needed by the applicant for his daily use and if the mobile phone got damaged then it would create problems for the applicant and the applicant is also ready and willing to abide by all the conditions imposed by this Court while releasing the muddamal. Thus, on all the above grounds the

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applicant has prayed to grant him the interim custody of the muddamal **Mobile Phone OPPO-AF-17 bearing IMEI No. 864991056953172.**

4. Heard the Learned Advocate for the respective parties and have gone through the documentary evidences appended with the present application at **Exh.3** whereby it transpires from the document produced at Mark 3/4; **Copy of bill of the Mobile Phone OPPO-AF-17 bearing IMEI No. 864991056953172, Bill No. 776 of Krishna Mobile Shop issued in the name of Prakashbhai Deepakbhai Khimsuriya (present applicant),** hence, it clearly transpires that the applicant is the purchaser and owner of the said mobile phone which has been seized.

Furthermore, *prima facie*, it transpires from the materials so also the report submitted by the Investigating Officer during the pendency of the present revision application, the muddamaal; **Mobile Phone OPPO-AF-17 bearing IMEI No. 864991056953172 has been seized valued at Rs.5,000/- under the provision of 102 of the Code of Criminal Procedure on account of the same having been found under the circumstances which creates suspicion of commission of any offence.**

However, the Investigating Officer nor anything reflects from the police investigating papers that the question muddamaal so seized is of incriminating or is such that has been involved in connection of the offence so disclosed. It appears that the said muddamaal has been

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recovered from the body of the accused while arresting the applicant-accused. Hence, in view of the aforesaid, the investigation process may go on for a long time, therefore, it is not advisable to keep the muddamal in the custody as it may get damaged and it is not appropriate for the safety of the muddamaal. Moreover, the *Hon'ble Supreme Court* in the case of *Sundarbhai Ambalal Desai vs. State of Gujarat reported in AIR 2003 SC 638* has held that under no circumstances the Muddamal should be kept in the police custody for long period and the same should be released by imposing appropriate conditions and the Muddamal should be handed over to the owner. In view of the afore-stated facts and circumstances and the judgment referred above following order is passed in the interest of justice :

:: O R D E R ::

1. The present application stands **allowed** and the order passed by the Ld. Trial Court below the application filed **under the provision of Section 451 of the Cr.P.C.** by the applicant for getting the interim custody of the muddamal; **Mobile Phone OPPO-AF-17 bearing IMEI No. 864991056953172**, is hereby **quashed and set aside.**
2. It is hereby directed to the Ld. Trial Court to release the muddamal; **Mobile Phone OPPO-AF-17 bearing IMEI No. 864991056953172** as claimed by the applicant on the conditions as deem fit by the Ld. Trial Court and on which the applicant has to abide.

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3. The muddamal be released after proper verification to the applicant.
4. Yadi of this order be sent to all the concerned.

*Pronounced in the open Court on this 17th day of **November - 2022**.*

Date : 17.11.2022
Amreli.

(RAMCHANDRA THAKURDAS VACHHANI)
SESSIONS JUDGE,
AMRELI
UNIQUE ID CODE NO. GJ00910.
