

Order below Exh.49 in Special Case No.22/2020.
(CNR No. MHJG010003632020)
(Dated 16.01.2020)

This is an application filed under Sec. 451 of Cr.P.C. by the applicant Iliyas Badshaha Khan, Age, 31 yrs., Occu-labour work, resident of Badshaha Khan, Room No.22, Second floor, Chal No.36, Gavtan Lane No.3, in front of Post Office, Andheri West, Mumbai, for releasing the property i.e. Mobile of Samsung company (Note 10 Mode) bearing IMEI No. 359259/ 03935796 and 359260/03935794, worth Rs.79,999/- seized by the Chopada Rural Police Station, in Crime No. 3028/2020, for the offence punishable under sections 8(c), 20 (c), 29 of N.D.P.S. Act 1985 read with section 188, 269, 270 of Indian Penal Code and under section 51(b) of Disaster Management Act 2005, on executing his indemnity bond.

2. Read application and say given by the prosecution as well as say given by the learned Advocate on behalf of accused persons.

3. Following points arise for my determination, which carry my findings thereon as follows:-

Sr.No.	Points	Findings
1.	Whether the applicant has made out the case for releasing the said property, on executing his indemnity bond, as prayed?	In the affirmative.
2.	What order?	As per final order.

- REASONS -

AS TO POINT No.1:-

4. It is submitted by the learned Advocate for the applicant/accused that the investigation has been complete, the charge-sheet has been filed, that the accused has also been released on bail, that the offence is not committed relating to the said mobile, that the applicant wants his mobile for his daily use, that it is lying with the police in switched off condition, that if it is not returned to him, it would be damaged. It is further submitted that the applicant has filed necessary documents to show his ownership and custody of the said mobile. It is further submitted that applicant is ready to abide by the terms and conditions imposed upon him while releasing the said mobile in his favour.

5. The police have given the say vide Exh.54 and police have given no objection for releasing the said mobile in favour of the applicant by imposing certain terms and conditions.

6. The applicant has filed the cash memo in his name and the copy of Aadhar Card. It appears from the said documents that the applicant is prima facie owner of the said mobile. It appears that it is not the prosecutions case that any offence has been committed by using the said mobile or relating to said mobile. The applicant was arrested in this offence, that he has been released on bail and even the charge-sheet has been filed in the court. As such, at this stage, the applicant appears to be prima facie owner and custodian of the said mobile and as per the police, the said mobile was seized from him. Therefore, I do not find any difficulty in releasing the said mobile in favour of the

applicant by imposing certain conditions. According, I answer point No.1 in affirmative and proceed to pass the following order:-

Order

1. The application is allowed.
2. Mobile of Samsung company (Note 10 Mode) bearing IMEI No. 359259/ 03935796 and 359260/03935794, worth Rs.79,999/-of the applicant Iliyas Badshaha Khan, Age, 31 yrs.,Occu-labour work, resident of Badshaha Khan, Room No.22, Second floor, Chal No.36, Gavtan Lane No.3, in front of Post Office, Andheri West, Mumbai, seized by the Chopada Rural Police Station, in Crime No. 3028/2020, for the offence punishable under sections 8(c), 20 (c),29 of N.D.P.S. Act 1985 read with section section 188, 269, 270 of Indian Penal Code and under section 51(b) of Disaster Management Act 2005, be released in his favour on his executing indemnity bond of Rs.50,000/- (Rupees Fifty Thousand only)
3. The applicant is directed that he shall not sell the said mobile to anybody.
4. He shall not transfer the said mobile in any mode to anybody.
5. He shall not cause any changes in the original make of the said mobile.
6. He is directed to produce the same mobile before court, as and when ordered by the court to do so.

Date:16.01.2021

(Rajeev P. Pande)
Judge, Special Court,
(District Judge-2) and A.S.J., Amalner.