

**MHKO010022282020**

**Order below Exh. 38 in Sessions Case No. 155/2020.**

1. This is an application under section 457 of Cr.P.C. for release of muddemal mobile handset of Samsung Company and motor cycle bearing registration No. MH-10-DE-1124. As per contention of applicant, he is owner of the above said muddemal property described above. It has been seized by the police in Crime No. 226/2020 registered with Gandhinagar police station and now pending in the stationary condition in Gandhinagar police station. As per his contention, muddemal property is of his daily use. If these properties are kept in stationary condition, that damage and depreciation will be caused to said property and unnecessarily he will suffer economical loss. If these properties released in his favour on indemnity bond, he will not change colour, structure of said muddemal property or he will not alienate the same to anybody till final decision of this case. Hence, prayed for releasing the muddemal property in his favour.

2. The prosecution has resisted this application by filing say at Exh. 41 and Report Exh. 40 and denied contention of

application. As per its contention, the offence is serious one and muddemal property is required at the time of hearing of the case. If the muddemal property is released in favour of applicant then he will change the nature of the same. It is also contended that if mobile handset is released in favour of the accused there is possibility of destroying data in the mobile phone which is part of evidence. Hence, prayed for rejecting application.

3. Following points arise for my determination and I have recorded my findings thereon for the reasons given thereunder.

Sr. No.	Points	Findings
1.	Whether muddemal properties are required to be released in favour of the applicant ?	Partly in the affirmative to the extent of motor cycle.
2.	What order ?	As per final order.

### **REASONS**

#### **As to Point no.1 and 2 :**

4. Heard learned counsels for both sides and perused the documents i.e. Registration Certificate and Insurance Policy of muddemal motor cycle produced by the applicant. From the

document, it is obvious that the applicant is a registered owner of the above described motor cycle. If it is kept in stationary condition in police station, certainly, damage and depreciation will be caused to the muddemal motor cycle and the applicant will suffer economical loss unnecessarily. Hence, I am of the view that there is no hurdle to release the motor cycle in favour of applicant by imposing conditions on him. However, if muddemal mobile handset is released in favour of the accused/applicant possibility of tampering data in the mobile phone by the accused so as to destruct the evidence cannot be ruled out. Consequently, there is likelihood of tampering prosecution evidence. Hence, I am of the view that mobile handset and SIM card in it cannot be released in favour of the applicant. Hence I answered point No. 1 partly in the affirmative and partly in the negative. In the result, I proceed to pass following order :-

### **ORDER**

1. The Application is allowed partly.
2. The Investigation officer of Crime No. 226 of 2020 of Gandhinagar Police Station is hereby directed to handover the interim custody of Muddemal Motor cycle bearing registration No.MH-10-DE-1124 having its chassis No. MBLHAR086J5L02424

and engine No. HA10AGJ5L06684 to the applicant on executing indemnity bond of Rs. 50,000/- (Rs. Fifty thousand only).

3. The Investigating Officer is further directed to take photographs of the said vehicle and prepare detailed panchanama at the time of returning the above said vehicle to the applicant.

4. The applicant shall not change colour and structure of the muddemal motor car, so as to destruct identity of muddemal motor cycle, till final decision of this case.

5. The applicant shall produce muddemal motor cycle before this court as and when directed by this court, by his own expenses.

6. The applicant shall not alienate muddemal motor cycle either by way of sell, gift etc. to anybody till final decision of this case.

7. The applicant shall not use this motor cycle for commission of crime in future.

8. Application seeking release of mobile handset stands rejected.

Date :17.12.2020.

( **B.D.Shelke** )  
Additional Sessions Judge,  
Kolhapur.