



ORDER BELOW EXH.1 IN CRI.M.A. NO. 33/2026.

Kumar Dadarao Sherkar.

Vs.

State of Maharashtra.

This is an application u/s. 503 of the Bharatiya Nagarik Suraksha Sanhita, 2023 filed by applicant Kumar Dadarao Sherkar for return of the Vivo V30 mobile phone having its IMEI No. 1:863718068755399, IMEI 2: 863718068755381 which was seized in connection with Crime No. 84/2026 pertaining to the offences punishable u/s. 65(e), 80, 81, 83, 90 and 103 of the Maharashtra Prohibition Act., registered with Excise Department, Dharashiv.

2) Investigating Officer (I.O.) has filed his say vide Exh.6, stating that said mobile cannot be released as it is seized in connection of crime u/s. 65(e) of the Maharashtra Prohibition Act. Ld. A.P.P. Shri. S. R. Sayyad has filed his say on overleaf of the present application, stating that seized mobile phone is required for identification during the course of trial. If vehicle handed over to applicant, he may again use it for commission of similar offence. With this, he has prayed that this application being devoid of merits is liable to be rejected.

3) I have heard Ld. Adv. Shri. A. G. Kawade for the applicant & Ld. A.P.P. Shri. S. R. Sayyad for the State at considerable length, and have gone through the record of the

present application.

4) There is nothing on record to reveal that confiscation proceeding of the seized mobile is initiated u/s. 100 of the Maharashtra Prohibition Act. Hence, I consider the application on merit.

5) At the outset, it is necessary to mention here that in case of *Sunderbhai Ambalal Desai Versus State of Gujarat* (cited supra), the Honorable Apex Court has considered the situation that has emerged due to reluctance or non-exercise of powers vested with subordinate Courts under Sec. 451 and 457 of the Criminal Procedure Code resulting into huge property lying at Police Stations as well as Courts. To overcome such situation, the Honorable Apex Court has issued detail guidelines as to various types of properties which are seized and lying at Police Station or Courts occupying sufficient space as well as subject to natural process of decay. The Hon'ble Apex Court in the case stated supra has observed that "the powers u/s. 451 Cr.PC. has to be properly and promptly excised by the Magistrate and seized articles should not be kept for long time at the police station, in any case, for not more that fifteen days to one month." Thus, while dealing with the present application, I have to keep in the mind the ratio laid down by the Apex Court in the case stated supra.

6) The perusal of copy of purchase receipt of seized mobile vide Exh. 4/2 revealed that applicant is owner of the seized mobile. To my mind, the possibility of causing damage to seized mobile cannot be ruled out if kept lying in the police station. Obviously, the trial would not be concluded in near

future. In the above circumstances, I have no hesitation to hold that the applicants are entitled to have possession of seized mobile. Thus, for the reasons stated supra, I proceed to pass the following order.

ORDER

- 1) The application is allowed.
- 2) The Investigating Officer is directed to hand over the custody of Vivo V30 mobile phone having its IMEI No. 1:863718068755399, IMEI 2: 863718068755381 seized in Cr. No.84/2026 to the applicant by preparing the detailed proper panchnama.
- 3) The Investigating Officer is further directed to take the photographs of said mobile at the cost of applicant. The said photographs shall be attested by the applicant and counter signed by him.
- 4) The applicant is directed to furnish suputnama of Rs. 36,000/- (Rupees Thirty Six thousand only) on stamp of Rs. 200/- in view of Article 35 Schedule-I of the Maharashtra Stamp Act, 1958.
- 5) Applicant shall not transfer, sale, gift or in any manner create third party interest in the said mobile till the conclusion of trial.
- 6) Applicant shall not in any way make any material change in the said mobile which would affect the identification of the same.
- 7) The applicant shall not use the said mobile for the commission of any offence, otherwise this itself be a ground for cancellation of this order.
- 8) The applicant is directed to produce the above said mobile as and when directed by the Court.
- 9) The indemnity bond be executed before the investigating officer as charge sheet is not filed.

- 10) The investigating officer is directed to submit panchanama & photographs of said vehicle along with indemnity bond executed by the applicant in the Court.

(Dictated & pronounced in the open Court.)

Washi.

Date- 09/06/2026.

(Smt. M.V. Patil-Rathode)

Judicial Magistrate, F.C., Washi.

CERTIFICATE

I affirm that, the contents of this P.D.F. file judgment are same, word to word, as per the original judgment.

Name of Stenographer	---	A.M.Wagh, Stenographer G-3
Name of the Court	---	C.J.J.D. & J.M.F.C. Washi
Date of order	---	09/06/2026
Order signed by the Presiding officer on	--	09/06/2026
Order uploaded on	—	09/06/2026