

IN THE COURT OF DISTRICT COURT-1 AND ADDITIONAL
SESSIONS COURT, PANVEL-RAIGAD
ORDER BELOW EXH.61 IN SESSIONS CASE NO.427/2019
CNR NO.MHRG170027292019
(DATED 05/12/2020)

This is an application, filed by applicant Amit Dattaram Kaikade under section 457 of the Criminal procedure code, for returning the seized mobile, pending trial.

2. The case of the applicant in brief is that, he is owner of Samsung Galaxy S7 EDGE (32GB) mobile having IMEI No.357327073278398 Panvel City police seized said mobile in C.R.No.291/2018 punishable u/sec. 302, 324, 323, 504, 506 r.w.34, 120(B) 201 of I.P.C., by keeping charge on the accused Roshan Pawar that, he was using said mobile phone at the time of commission of the offence. Ld.Adv.submitted that from the charge-sheet it reveals that during interrogation said mobile phone was produced by the wife of accused Roshan Pawar to the investigation agency which is shown recovered seized under panchanama. Ld.Adv.submitted copy of receipt of said seized property for showing his ownership. Ld.Adv.submitted that the seized property is electronic item and keeping it idle will diminish its value. Ld.Adv.submitted that said mobile phone has no concern with the present matter except the allegation the same has been used by accused Roshan Pawar at the particular period. Ld.Adv.submitted that if the temporary custody is given the applicant will not sell, alienate, change its nature etc. without prior permission of the court and ready to give undertaking and indemnity bond, as per order of the court. Lastly applicant prayed to allow application.

3. The prosecution by filing say at Exh.66 strongly objected that, the seized property has been used by the accused Roshan Pawar at the time of commission of crime as he made some phone calls from it. Ld.APP also submitted that during course of investigation the present applicant has not submitted any documents to the investigation agency and hence, application be rejected.

4. Upon hearing the Ld.Advocates and after going through prima facie the charge-sheet, it appears that said mobile phone has been produced by the wife of the accused Roshan Pawar to the investigation agency. Except the present applicant who claimed to be owner of the seized property there is no other claimant, the applicant has produced the copy of payment receipt made by him before the court. The only allegation of the prosecution regarding the seized property is that the said phone was under use by the accused Roshan Pawar and it is further alleged that, at the relevant time of incident Roshan Pawar has made some phone call from it. It is to be noted that, the investigation agency must have collected CDR report on the basis of mobile phone number ie. SIM card which is also seized under panchanama. At the most the said SIM card can be preserved as muddemal property during pendency of trial, however, the mobile phone instrument can be returned to its owner during pendency of trial with certain conditions. Hence, order.

ORDER

1.The application is partly allowed.

2.The seized property i.e. **mobile phone-Samsung Galaxy S7 EDGE (32GB) mobile having IMEI No.357327073278398/01** seized in C.R.No.291/2018 registered with Panvel City police station u/sec. 302, 324, 323, 504, 506 r.w.34, 120(B) 201 of I.P.C be returned to the applicant **Amit Dattaram Kaikade after removing the SIM card** on his executing indemnity bond of **Rs.40,000/- (Rs.Fourty Thousand Only)** on the following conditions :-

- i. Applicant shall not sell, mortgage or dispose of the said mobile in any manner.
 - ii. Applicant shall not change the nature of the said mobile.
 - iii. Applicant shall produce the said mobile as and when so ordered by the court.
3. Investigation Officer is directed to return the said mobile to the applicant by taking photographs of the same and after preparing detailed panchanma of the mobile and after getting the compliance of indemnity bond from the applicant with the conditions imposed on him in clause No.2 of this order and submit the documents in this Court in C.R.No.291/2018 registered with Panvel City police station u/sec. 302, 324, 323, 504, 506 r.w.34, 120(B) 201 of I.P.C.
4. **SIM card seized in the matter be preserved for trial purpose.**
5. Application is accordingly disposed of.

(Directly dictated in open court on the office computer.)

Panvel
Date :- 05/12/2020.

(R.G.Asmar)
Additional Sessions Judge,
Panvel-Raigad