



State of Maharashtra

...Prosecution

V/s.

Mansoor Abdul Bijali

...Accused

COMMON ORDER BELOW EXH.23 & 24

The application at Exh.23 has been filed seeking to direct the Investigating Officer to produce the forensic examination report of Apple i-phone 13 Pro Max mobile phone, while the application at Exh.24 has been filed expressing that seizure of said mobile phone is illegally shown and hence there shall be an action under Section 340 of the Code of Criminal Procedure (for short, 'Cr.P.C.').

2. It is contended, that the Apple mobile phone mentioned above was purchased by accused no.2 on 01.06.2022 and hence it was not in existence prior to the crime but still it is shown as seized in the crime and sent to forensic examination. It is also contended, that the panchnama of seizure dated 14.07.2022 is incorrectly created. In fact, the mobile phone of accused no.2 was snatched by police officer from accused no.2 and also got its password disclosed from accused no.2. Thus, allegedly police officer has misused the powers.

3. When say of Investigating Officer was called by the predecessor of this Court, he failed to file say on application at Exh.23. The predecessor of this Court has called say of learned A.P.P. on the application at Exh.24. But no say has been filed. However, on the application at Exh.23 the original informant has filed say thereby

resisting the application contending that accused has no right to interfere in the investigation. The accused cannot insist Investigation Officer to file the report. On these counts the informant has prayed to reject the application.

4. Since the contentions in both the applications pertain to the same mobile phone, for convenience both the applications are being decided by common order.

5. The learned Advocate for informant Shri. P.R. Lomate did not turn for arguments. The State did not bother to appear through A.P.P. and to file reply or to argue the applications. The record shows that both the applications are pending for more than 2 ½ years. Hence, I have heard learned Advocate Shri. V.B.Patil for accused on both applications.

6. Learned Advocate Shri. V.B.Patil reiterated his contentions as per the contents of both the applications. Here, it shall be mentioned that whether the mobile phone was purchased subsequent to the alleged crime or not is a matter of evidence and accused has an opportunity while cross-examining prosecution witnesses including the Investigation Officer, to put questions in that regard or to file on record documentary evidence in defence. In substance, this is not the proper stage to go into this aspect. If the Court does so, it would amount to conducting a parallel mini trial. It shall also be mentioned, that if at all no report of forensic examination comes on record, it may not cause prejudice to accused. The burden is not on the accused in that regard. Hence the contentions and the prayer made in the application at Exh.23 cannot be considered at this stage of the case.

7. At the cost of repetition it shall be mentioned that whether the act of seizure of mobile phone was duly done or not is a matter of merit. There is no *prima facie* contention referring to Section 195 of Cr.P.C. or the Sections of the Indian Penal Code mentioned therein, in the instant application. No arguments are advanced as to how section 340 of Cr.P.C. can be invoked in this case. This Court cannot conduct a trial, separate from the trial of the crime, to find whether Investigation Officer has misused the powers. Therefore, the application at Exh.24 also has no merit.

8. Considering the discussion made above, both the applications shall be rejected. However, it shall be clarified that rejection of both applications will not prejudice the defence of the accused since the defence raised in the applications can still be put by accused to witnesses during their cross-examination. With these observations I pass following order.

ORDER

1. The application (Exh.23) is rejected.
2. The application (Exh.24) is rejected.

(Dictated and pronounced in Open Court)

Satara
Date : 09.06.2026.

(N.M.Jamadar)
Special Judge (S.C. & S.T.Act),
Satara.