

ORDER BELOW EXH.64 IN SESSIONS CASE NO. 38 OF 2022.
(CNR NO.MHYA010007032022)

1. This is an application for claiming interim custody of mobile phone viz, Samsung M-315 (M31) vide Section 457 of the Code of Criminal Procedure.

2. Perused application and say filed on behalf of prosecution below Exh.81. According to applicant, a mobile is seized by Kalamb Police Station in Cr. Bearing registration No.587/2021 from his possession. He is the owner and possessor of that property. Applicant is the appropriate person to claim the custody of that seized property. He is ready to produce it before court as and when required to the trial. He conceded to execute indemnity bond to that effect. According to him, if that article remained idles in police station it will cause damage and reduce its value. On all these counts he implored for handing over interim custody of said article to him and obliged.

3. The prosecution raised potent objections and prayed for rejection of the application. According to them accused is not the owner of the said article. He is not entitled for its interim custody. The property is required during the trial. Hence, the application be rejected at threshold.

4. In view of rival submissions I have pondered over entire record minutely. It seems the referred property is seized amid the investigation of crime No.587/2021 from the possession of the accused. It is not the case of prosecution that, certain incriminating article or any material evidence in the form of photos or videos are

stored. The CDR is already recovered and placed before this court. The papers of ownership are crystalline and exhibit that the applicant is the rightful owner of said cell phone. If such property remains at the police station it will cause damage to it. Except applicant no one has come forward to the court claiming custody of this article. Thus, I believe accused/applicant is the appropriate person to have interim custody of the article enumerated in the application. There is no strong reason to disown the reliefs to the applicant. The applicant is ready to execute indemnity bond. Having seen over all scenario I believe there is no hurdle to hand over the interim custody of the said property to the applicant however, with certain conditions. Hence, the order.

ORDER

1. Application is allowed.
2. The interim custody of mobile referred and more specifically detailed in present application, seized in C.R. No.587/2021 registered with Kalamb Police Station, be given to the applicant vide Section 457 of the Code of Criminal Procedure, subject to following conditions.
 - I. He shall execute an indemnity cum supurtnama bond of Rs.25,000/- before the concerned I.O. While taking interim custody of the concerned mobile.
 - II. He shall not make any change in the appearance as well as structure of the said property. He shall not alter, change, modify its nature or sell the same.
 - III. He shall not use said mobile for any unlawful and prohibited purposes.
 - IV. He shall produce above article before this Court as and when directed to him.

- V. The Concern police are directed to prepare detailed panchanama of the mobile.
 - VI. The Concern police are directed to tender the indemnity bond, Panchnama and other related papers, after their execution, before this Court as early as possible.
3. Inform concerned police station accordingly.

Dt:- 01/12/2022.

(Amit Anant Laulkar)
Additional Sessions Judge,
Yavatmal.