

IN THE COURT OF METROPOLITAN MAGISTRATE,
36th COURT MUMBAI CENTRAL, MUMBAI.

C. C. NO. :- 09/MISC./2022.

C. R. NO. :- 1110/2021.

Railway Protection Force :- Dadar (W).

Naseem Ali Shamseer Hussain.

.... Applicant.

V/s.

The Sr. Inspector of Police,

(Railway Protection Force, Dadar (W), Mumbai).

.... Respondent.

ORDER BELOW EXH.-1

This is an application moved by the applicant Mr. Naseem Ali Shamseer Hussain, R/o., 304, Sitaram Apartment, Fulpada Road, Virar (E), Vasai, Palghar, under Section 457 of The Code of Criminal Procedure seeking the custody of IQ00Z3 made mobile handset seized by Railway Protection Force, Dadar (W), in connection with C. R. No. 1110/2021, registered for the offence punishable under Section 143 of The Railways Act, 1989.

2. Applicant request to release the property on the ground that, he is the owner of muddemal property i.e. IQ00Z3 made mobile handset, that the same is required to him for personal purpose. That he is ready to obey the orders of Court and be abide with the conditions imposed upon him.

3. Ld. P.P. and Inquiry Officer have submitted their say to the application. I.O. has strongly opposed the said application. It is the contention of Inquiry Officer that, if the custody of said muddemal is released to the applicant the accused may destroy the evidence. He has further contended that, if the custody of this property is released to the

applicant at this stage of the proceeding, it would cause hurdle in trial. *Inter-alia* on these grounds therefore, he has requested for dismissal of application.

4. Ld. P.P. has also based his objection on the same line. He further submitted that, said muddemal will be required for its identification at the trial.

5. I have heard Ld. Advocate for both the parties.

6. Under section 457 of the Code of Criminal Procedure only the entitlement of possession of seized article has to be considered by the Magistrate. It is the contention of the present applicant that, he is the owner of the seized property i.e. IQ00Z3 made mobile handset. To substantiate his contention he has produced on the record the Copy of Tax Invoice dated 08/06/2021 of mobile handset having I.M.E.I. No.863999059663251 and 863999059663244 in the name of Gandhi Handloom, Mumbai-15 and Copy of his Aadhar Card. These documents shows his lawful entitlement over the property. As per the law, Tax Invoice of mobile handset is the valid proof of title of the said mobile handset. As per the Tax Invoice the applicant is the owner of subject mobile handset till date.

7. The appalling situation of case properties, such as vehicles, machines and kindred items found strewn in police station and Court premises and ultimately becoming junk and loosing their value had engaged the attention of the Hon'ble Supreme Court in the case title ***Sunderbhai Ambalal Desai V/s. State of Gujrat A.I.R 2003 SC.638***. In this case the Hon'ble Apex Court has held that, once the ownership of the applicant over the articles is ascertained the powers under Section

451 of the Code of Criminal Procedure should be exercised by the Magistrate expeditiously and judiciously so that the owner of the article would not suffer because of its remaining unused or by its misappropriation. It is further observed that, if the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. It is also held that, if necessary, evidence could also be recorded describing the nature of the property in detail.

8. No doubt the production of property which have evidential value during evidence is part of fair trial. With the advanced technology, it is however not necessary that the original of that property inevitably has to be preserved for the purpose of evidence in the change context of time. As suggested in the case *supra* the reception of the secondary evidence is permitted in law. The technique of photography and photocopying are far advanced and fully developed. Movable property of any nature can be a subject matter of photography and taking necessary photographs of all the features of the property clearly is not an impossible task in photography and photocopying. Besides, as suggested by the Hon'ble Supreme Court in case *supra* panchnama could be drawn clearly describing the features and dimensions of the movable property which is the subject matter of criminal trial.

9. Therefore, so far as the objection raised by the prosecution that the property is the case property and that it would be required at the trial will not be a justifiable ground to deny the custody of property. The nature of property seized in the present case is such that if it is allowed to be lying in idle condition in the police station premises it would certainly become a junk. As suggested above if the photographs

of the said mobile handset showing its clear I.M.E.I. number is taken and the same are kept on the record, the said photographs may be used at the trial to prove the identity of the said mobile handset and there is no need of its actual production before the Court. Furthermore, as observed by the Hon'ble Supreme Court in the case *supra* the identity of the seized article can be also proved by the witness by giving its detail description in his evidence. Therefore, withholding the custody of said mobile handset for the reason that, the same would be required for its identification purpose at the trial would be unjustifiable ground at law.

10. In view of the above, the application therefore needs to be granted. Hence, the order :-

ORDER

- 1) The custody of seized muddemal i.e. IQ00Z3 made mobile handset, I.M.E.I. No.863999059663251 and 863999059663244 seized by Railway Protection Force, Dadar (W), Mumbai, in connection with C. R No. 1110/2021, registered for the offence punishable under Section 143 of The Railways Act, 1989 be given to the applicant on further following conditions :-
 - (a) Applicant shall execute indemnity bond of ₹ 60,000/- (Sixty Thousand).
 - (b) That he shall produce the muddemal as and when required by the police or the Court.

- (c) That he shall not change the structure of the muddemal or alienate the same in any way without the permission of Court.
- (d) That the I.O. shall take the photographs of muddemal i.e. mobile handset showing its clear I.M.E.I. number and prepare the panchanama at the time of releasing its custody to the applicant.
- (e) That the said photographs shall be countersigned by the applicant.
- (f) That the applicant shall not use it for any type of offence in future.
- (g) Inform the I.O. accordingly.

Date : 21/03/2022.
SRD.

Sd/-
(J. C. Dhengale)
Metropolitan Magistrate,
36th Court, Mumbai Central,
Mumbai.