

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 2057 OF 2015

Ajit Atmaram Apraj. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Rajendra S. Bidkar, advocate for Applicant.

Ms. P.P. Shinde, APP for State.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : JANUARY 12, 2017**

P.C.:

1 The learned Counsel appearing for the applicant submits that after the application was rejected by the Sessions Court, the applicant had filed an application under Right to Information Act, 2005 to Arey Police Station and had asked for the station diary to ascertain the manner and mode of the investigation carried out in Crime No. 3 of 2014(Arey Police Station). Charge-sheet is filed in Crime No. 59 of 2015 by DCB CID Unit XII. The learned Counsel submits that Arey Police Station had obliged and had given the copy of the station diary to the applicant under the Right to Information Act.

2 Section 8(1)(h) of the Right to Information Act, 2005 reads as follows:

“Exemption from disclosure of information-

(h) information which would impede process of investigation or apprehension or prosecution of offenders;”

3 Upon a query made by the Court, the learned APP upon instructions submits that there is a circular issued by the DCP, Detection I(Appellate Authority) issuing administrative order that such information can be shared with the accused persons and under the said orders, the information was provided to the accused. It appears that the appellate authority is of the opinion that sharing the information or the mode and manner of investigation does not impede the process of investigation, as it is a public document.

4 The learned Counsel for the applicant submits that on the basis of the said information received under the Right to Information Act, it appears that there is material, which is in favour of the accused and further submits that said material was not before the Sessions Court

when the application under section 439 of the Code of Criminal Procedure, 1973 was argued. The learned Counsel for the applicant therefore, seeks liberty to withdraw this application with further liberty to approach Sessions Court in the changed circumstance.

5 It would be the discretion of the Sessions Court to ascertain whether it amounts to change in circumstance. Firstly, this Court would fail to understand as to whether the case diary and station diary of any police station can be termed as public document and can be given to the accused under the Right to Information.

6 Section 172(3) of the Code of Criminal Procedure, 1973 reads thus :

172. Diary of proceedings in investigation.

[\(1\)](#)

[\(2\)](#)

[\(3\)](#) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them

to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply,

This Court is of the opinion that whether any administrative order could be passed in contravention of the mandatory statutory provisions under section 172(3) of the Code of Criminal Procedure, 1973. The diary of proceedings as contemplated under section 172 of the Code of Criminal Procedure, 1973 is a day to day proceedings in the course of investigation, setting forth the time at which the information reached to the police, time at which he began and closed the investigation, place or places he visited and statement of the circumstances ascertained through his investigation. In the day to day proceedings, the time at which the information was received and the steps taken by the police are mentioned in the station diary and therefore, section 172(3) would not be applicable only to case diary but to station diary also.

7 Liberty as prayed for is granted in the interest of justice with further liberty to approach the Sessions Court. The application stands dismissed as withdrawn and disposed of accordingly.

8 The learned Sessions Court shall decide the subsequent bail application in view of the provisions under Section 172(3) of the Code of Criminal Procedure, 1973. As on today, the provisions of Section 172(3) have neither been relaxed nor modified by the legislature.

9 Learned APP to take instructions and file affidavit as to whether any administrative order can contravene the provisions u/section 172(3) of the Code of Criminal Procedure, 1973 in connected matter i.e. Cri. B.A. No. 2361 of 2016, which is scheduled on 3/2/2017.

10 Office to send the copy of this order to the Commissioner of Police, Mumbai for appropriate action.

(SMT. SADHANA S. JADHAV, J)