

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CRIMINAL WRIT PETITION NO. 91 OF 2015**  
**WITH**  
**CRIMINAL APPLICATION (MAIN) NO. 238 OF 2016**

**CRIMINAL WRIT PETITION NO. 91 OF 2015**

Shri Rajesh Faldesai, son of Khushali Faldesai, 36 years old, married, businessman, Indian National and resident of Flat No. GF-2, Bom Jesus Building, Old Goa, Tiswadi, Goa. .... Petitioner

Versus

1. State of Goa, Through Police Inspector, Old Goa Police Station, Old Goa, Tiswadi, Goa-403 006.
2. Public Prosecutor, High Court of Bombay at Panaji, Goa. .... Respondents

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Shri Pavithran A.V., Advocate for the Petitioner.

Shri S.R. Rivankar, Public Prosecutor for the Respondents.

**CRIMINAL APPLICATION (MAIN) NO. 238 OF 2016**

State, Through Police Inspector, Old Goa Police Station, Old Goa. .... Applicant

Versus

1. Rajesh Faldesai @ Rajesh Desai, s/o Khushali Faldesai, age 34 years, R/o Flat No. GF-2, Bom Jesus Residency, Old Goa.
2. Shri Mahavir Nada, s/o Kashi Nadar, aged 22 years, r/o Type C-40, NIO Colony, Dona Paula.
3. Shri Netra Singh, s/o Dambes Bahadur, aged 29 years, r/o Nagali, Taleigao, N/o Perwali Pathar, Hankhati, Tinsukia, Assam (H. No. not known).
4. Shri Yan John, s/o Chaba John, aged 29 years, r/o Nagali, Taleigao, N/o Wall Fort Colony, H. No. 14, Dimapur, Nagaland.

5. Shri Chetan Korgaonkar, s/o Dayanand Korgaonkar, aged 19 years, R/o Flat No. A/N, Rolland Apts., Cabesa St. Cruz.
6. Shri Sandeep Pujari, s/o Krishna Pujari, aged 19 years, r/o H. No. 201, Bandh, St. Cruz.
7. Shri Zenito Cardozo, s/o Vincent Cardozo, aged 21 years, r/o Maddir, St. Agustin Wado, St. Cruz, Ilhas, Goa. .... Respondents

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Shri S.R. Rivankar, Public Prosecutor for the Applicant.

Shri Pavithran A.V., Advocate for the Respondent No. 1.

**CORAM:- C.V. BHADANG, J.**

**DATE:- 8<sup>th</sup> January, 2018.**

**ORAL JUDGMENT:**

Both these cases are between the same parties and can be conveniently disposed off by this common judgment.

2. The challenge in Criminal Writ Petition No. 91/2015, filed by the original accused no. 1, against the respondent-State, is to the order dated 22.03.2011, passed by the learned Assistant Sessions Judge, Panaji in Sessions Case No. 21/2010, by which, the learned Assistant Sessions Judge has directed charge to be framed against all the accused, including the petitioner, under Section 307, 120-B read with Section 34 of IPC and Sections 4 and 25 of the Arms Act. That order has been confirmed by the learned Additional Sessions Judge, Panaji vide judgment and order dated 08.05.2015, in Criminal Revision Application No. 23/2011.

3. It appears that during the pendency of the petition, the respondent-State filed an application (Exhibit-D/59) before the learned Additional Sessions Judge on 06.01.2016, for permission to produce the CDR of cell phone No. 9326077733. According to the learned Public Prosecutor, the CDR details are relevant for the purpose of deciding the issue of framing of charge. That application was dismissed by the learned Additional Sessions Judge by order dated 16.07.2016, which order is subject matter of challenge, at the instance of the State, in Criminal Application (Main) No. 238/2016.

4. During the course of the arguments at bar, it was not disputed that, in an appropriate case, the Court can permit production of documents, which may be relevant for the purpose. The learned Counsel for the petitioner/accused no. 1, on instructions, state that the CDR can be allowed to be placed on record and thereafter, the learned Sessions Judge can consider the question of framing the charge afresh, in accordance with law. The learned Public Prosecutor has no objection for the same. The parties point out that the matter is now before the Additional Sessions Judge, Panaji.

5. In such circumstances, by consent of parties, the following order is passed:-

**ORDER**

(a) Criminal Writ Petition No. 91/2015 and Criminal Application No. 238/2016, are hereby allowed.

(b) The impugned order dated 22.03.2011, framing the charge as also the order dated 16.07.2016 (below Exhibit-D/59), refusing permission to produce the CDR, are hereby set aside.

(c) The application (Exhibit-D/59) filed by the State, is hereby allowed as prayed.

(d) The learned Additional Sessions Judge, Panaji shall consider the question of framing of charge afresh, after hearing the parties in accordance with law.

(e) Rival contentions of the parties are left open.

(f) Rule is made absolute in the aforesaid terms, with no order as to costs.

**C. V. BHADANG, J.**