

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

CRIMINAL WRIT PETITION NO. 4522 OF 2018

Dinesh S.Patil

... Petitioner

Vs.

State of Maharashtra
(Through ACB Thane)

... Respondent

Mr.Rahul S. Kadam for the Petitioner.

Mr.Yogesh Y. Dabke, APP for the Respondent - State.

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED : DECEMBER 03, 2018**

P.C.:

1. By invoking the writ jurisdiction of this Court under Article 227 of the Constitution of India, this Petition is filed wherein the order dated 29.09.2018 passed by the learned Additional Sessions Judge, Palghar is challenged.

2. The petitioner/accused has filed an application under Section 91 of the Code of Criminal Procedure, 1973 ("the Cr.P.C.") for preserving Call Detail Record (CDR) and Subscriber Detail Record (SDR) along with Cell ID and Site ID for the period of 01.10.2017 to 31.03.2018. The learned Sessions Judge partly allowed the said application. Hence, this Petition.

3. The learned counsel for the petitioner/accused has submitted that the petitioner is a prosecutor working in Palghar Court. He has further submitted that the complainant was an accused before him. Pursuant to the said conspiracy, a trap hatched by the two advocates, complainant and the investigating officer. He has further submitted that advocate Nitesh Pawade is an accused in the case under sections 354 and 509 of the Indian Penal Code in C.C. No. 357 of 2014 in which three witnesses are already examined. He has further submitted that in the said case, advocate Pratik Partole is a prosecution witness, however, he is defending the advocate Nitesh Pawade. He has further submitted that Nitesh Pawade is an advocate of the complainant in the case registered under Prevention of Corruption Act against the petitioner. The petitioner did not succumb to the pressure placed and request made in respect of showing leniency in C.C. No. 357 of 2014 wherein advocate Nitesh Pawade is an accused. He has further submitted that these two advocates have maliciously decided to involve the petitioner in prevention of corruption case where the petitioner has no concern in fact. He has further submitted that the petitioner made an application under Section 91 of the Cr.P.C. for preserving CDR and SDR along with Cell ID and Site ID of these two advocates, complainant and the investigating officer for the period of 01.10.2017 to 31.03.2018. The said application was partly allowed in respect of the complainant

and the investigating officer, however, it was rejected qua both the advocates. He has further submitted that CDR and SDR are required to be preserved by those mobile companies so that the details can be used by way of defence of the petitioner. He has further submitted that the petitioner has right to take defence, which cannot be vitiated if such record is not available. In support of his submissions, he has relied on the judgment of this Court at Aurangabad Bench ***dated 17.06.2016 in Criminal Writ Petition No. 678 of 2015*** in the case of ***The State of Maharashtra Versus Vinod Jagannath Chaudhari***.

4. Heard submissions. In the case of ***Vinod Jagannath Chaudhari*** (*supra*), similar application under Section 91 of the Cr.P.C was made seeking direction to the cellular services provider to preserve the record with regard to the cellular phones. The learned Single Judge allowed the application of the accused and directed to preserve the CDR and SDR along with tower location.

The ratio can be applied considering the facts of each and every case.

5. In the present case, the trap took place on 22nd February, 2018 therefore, CDR and SDR of the complainant and the investigating officer were directed to be preserved for the period of 01.10.2017 to 31.03.2018. One advocate was defending the complainant and the

other advocate was defending that advocate in the criminal case filed against the said advocate. Though the petitioner/accused is not open his defence in the beginning, he has not produced any substantive material. The preservation of CDR and SDR of no use, as the two persons being advocates from the same profession might have been called each other and also the complainant being a client also bound to have some telephonic communication with his advocate. Hence, the order dated 29.09.2018 passed by the learned Additional Sessions Judge cannot be faulted with. Writ Petition is rejected.

(MRIDULA BHATKAR, J.)