

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 215 OF 2022

Ganesh S/o Sopanrao Darade	... Petitioner
Versus	
The State of Maharashtra	... Respondent
....	
Mr. D. M. Shinde, Advocate for petitioner	
Mr. R. B. Bagul, APP for respondent - State	
....	

CORAM : R. G. AVACHAT, J.

DATED : 29th APRIL, 2022

PER COURT :-

. The challenge in this petition is to the common order dated 29.11.2021, passed by the learned Additional Sessions Judge, Basmatnagar, on applications Exh.95 and 96 in Sessions Case No.40 of 2020.

2. The petitioner herein is an accused in the said case. Both those applications were moved by him under Section 91 of the Code of Criminal Procedure, asking for production of Call Data Records (CDRs) of cell phone numbers, specifically mentioned in those applications. One of the cell phone belongs to the petitioner herein. It is his case that the other cell phone numbers belong to the

witnesses cited to be examined in the case. According to him, at the material time, all of them were not at the scene of offence.

3. The learned Sessions Judge was pleased to reject both the applications observing that there is a considerable delay. The applications ought to have been filed at the earliest possible opportunity. The CDR is preserved for not more than eleven months. The information solicited, therefore could not be produced. The petitioner – accused has an opportunity to lead evidence when his turn for defence evidence would come.

4. The learned APP supported the impugned order.

5. The petitioner is accused of having committed offence under Section 302 of the Indian Penal Code. It is his case that at the material time, so called eye witnesses were not at or around the scene of offence. He too was away. There may be delay in preferring applications. It is, however, best known to the authorities of the concerned agencies as to whether CDR is in existence or has been destroyed. The petitioner - accused has to have a fair opportunity to meet the prosecution case. It would, therefore, be desirable to dispose of the writ petition in terms of the following order.

6. The trial Court shall first, ascertain from the authorities concerned as to whether the CDRs of the cell phone numbers mentioned in both the applications are available, and if, so ask, those authorities to preserve the same until his further orders. When the turn of the petitioner – accused to lead evidence in his defence would come, he may urge for production of CDRs, if reported to be available.

7. Needless to mention, non availability of CDRs shall not be a reason to raise any adverse inference against the prosecution.

8. With these observations, the criminal writ petition is disposed of.

[R. G. AVACHAT, J.]

SMS