

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

CRIMINAL WRIT PETITION NO.5582 OF 2021

Ranjeet @Samadhan Pandurang Hande	...Petitioner
Versus	
Sangita Somnath Hambirrao (Deceased)	
Through her Legal Heirs	
Somnath Subhash Hambirrao and Anr.	...Respondents

Ms. Rui Danawala i/b Mr. Umesh R. Mankapure, for the Petitioner.

Ms. Anamika Malhotra, A.P.P for the Respondent No.2– State.

CORAM : REVATI MOHITE DERE, J.

DATE : 31st MARCH 2022

P.C. :

1. Heard learned counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 4th October 2021, passed by the learned Additional Sessions Judge, Pandharpur, below Exhibit – 5 in Sessions Case No.63 of 2021, by which, the learned Judge rejected the petitioner's application seeking a direction to the Investigating Officer to provide Call Detail Record ('CDR') in respect of four cell phone numbers.

3. On the last date, the learned APP was directed to file an affidavit of the concerned Officer, as to whether the police had collected the CDR during the course of the investigation. Pursuant thereto, the learned APP has tendered an affidavit of the Prashant Hule, Assistant Police Inspector, Sangola Police Station, Solapur Rural. The said affidavit is taken on record and a copy thereof is served on the learned counsel for the petitioner.

4. Perused the papers. By this petition, the petitioner seeks quashing and setting aside of the impugned order dated 4th October 2021 passed by the learned Additional Sessions Judge, Pandharpur, by which the learned Judge rejected the petitioner's application seeking a direction to the Investigating Officer to provide CDR in respect of four cell phone numbers. It is the case of the petitioner that the CDR will throw light on the innocence of the petitioner and that the police ought to have collected the said records during the course of the investigation.

5. Learned Counsel for the petitioner submits that in the event the CDR have not been collected, the police be directed to collect the said

CDR. She submits that the CDR of the said four cell phone numbers will bring out the innocence of the petitioner in the alleged offence.

6. Learned APP opposes the petition. She submits that since the police during their investigation had never collected the CDR, the question of producing and handing over the same to the petitioner will not arise. She submits that it is always open for the petitioner to file an appropriate application before the trial Court, against the concerned service provider for producing the said CDR.

7. Para 8 of the affidavit of Prashant Hule, Assistant Police Inspector, Sangola Police Station, Solapur Rural, reads thus:-

“8. One of the grounds of the Petitioner is that the Ld. Sessions Judge failed to consider section 91 of the CrPC. Section 91 of the CrPC talks about the production of any document or any other thing desirable for the purpose of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer and that such Court may issue summons to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce the required document. Bare perusal of the provision makes it very clear that the documents or things as sought to be produced should be in possession of the person. In the present case, the CDR details were never collected during investigation hence the same cannot be produced under any circumstances.”

8. From the aforesaid para 8 of the affidavit filed by Prashant Hule, Assistant Police Inspector, Sangola Police Station, Solapur Rural, it is clearly evident that the CDR were never collected by the police during the investigation and therefore the same cannot be produced before the Court.

9. Considering the aforesaid, no interference is warranted in the impugned order dated 4th October 2021, passed by the learned Additional Sessions Judge, Pandharpur, below Exhibit – 5 in Sessions Case No.63 of 2021.

10. The Petition is accordingly dismissed and disposed of as such.

11. At this stage, the learned counsel for the petitioner seeks liberty to file an appropriate application before the trial Court, seeking CDR from the concerned service provider.

12. Needless to state, that the petitioner is always at liberty to file

an appropriate application before the appropriate Court.

13. If such an application is filed, the learned Judge to consider the same on its own merits in accordance with law.

14. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.