

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

70 CRIMINAL WRIT PETITION NO.31 OF 2023

**BHARAT VISHNU PATIL
VERSUS
THE STATE OF MAHARASHTRA**

Mr. Nikhil D. Jaiswal, Advocate for the petitioner
Mr. Y. G. Gujrathi, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 23rd MARCH, 2023

P. C.

1. Heard the learned advocates for the parties.
2. This petitioner is challenging the order dated 14-06-2021 passed below Exh.70 by the learned Additional Sessions Judge, Sangamner in Sessions Case No. 21/2020 thereby the application for the release of the property i.e. two mobile handset of Samsung J-7 IMEI No.358425073262393 and OPPO IMEI No.855931044802775 is rejected.
3. The application was opposed by the prosecution

stating that out of six accused three are yet absconding and yet they are not found. The prosecution further submitted that in this mobile phones there is valuable data for the purpose of offence such as call details, numbers of other accused persons etc. If the mobile phones are given back valuable evidence to prove the case of the prosecution will be lost.

4. Considering the submission this court finds that mobile phones are seized on 22-01-2020 and keeping the mobile phones as it is will be of no help. If the prosecution desires to rely upon the data stored in the mobile phones, the prosecution can always copy data by taking precaution and can rely upon the secondary evidence by producing necessary certificates. In any case keeping the mobile phones as it is will not be served any purpose so as to get absconding accused arrested. Thus, only concern can be about data stored in the mobile phones. By taking precaution as stated above, the mobile phones can be released and can be given to the petitioner. There is no dispute about the ownership of the said mobile phones as the receipt are

produced by the accused on record. Merely because mobile phones are part of evidence is no ground for not to release the mobile phones. In view of above discussion, this court finds that the petition deserves to be allowed. Hence, the following order.

ORDER

- a] The criminal writ petition stands allowed.

- b] Impugned order dated 14-06-2021 passed below Exh.70 by the learned Additional Sessions Judge, Sangamner in Sessions Case No. 21/2020 is hereby quashed and set aside and the said application stands allowed.

- c] The prosecution to take data from the mobile phones by taking precaution.

[KISHORE C. SANT, J.]