

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

CRIMINAL WRIT PETITION NO.2955 OF 2023

Dipaksing Hapansing Rabadi

...Petitioner

Versus

The State of Maharashtra

...Respondent

Mr. Priyal G. Sarada, Advocate for Petitioner.

Mr. A.R. Patil, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 21st SEPTEMBER 2023

PC :

1. In this Petition the Petitioner has prayed for direction to the prosecuting agency to preserve the details of mobile phone No.9405573787 in the form of CDR and its tower location dated 3rd October 2022 and to produce it before the learned Additional Sessions Judge-2, Solapur, in Sessions Case No.35/2023.

2. Heard Mr. Priyal G. Sarada, learned Counsel for the Petitioner and Mr. A.R. Patil, learned APP for the State.

3. The prosecution case is in respect of murder of one Ravindrasing. The FIR was lodged by Bunjakaur on 3rd October

2022 at Jodabhavi Peth police station vide C.R. No562/2022. The investigation was carried out. The present Petitioner is one of the Accused who is in custody in connection with this case. The investigation resulted in a criminal trial as mentioned earlier. It is the case of the prosecution that the Petitioner's two daughters-in-law had left their house. His family was blaming Bunjakaur's family for the same and used to pick up quarrel. On 3rd October 2022 the Petitioner's sons Ajaysing and Vijaysingh assaulted Ravindrasingh with Gupti. The Petitioner's wife also assaulted him with a sharp weapon. It is mentioned in the FIR that the Petitioner assaulted Bunjakaur's daughter-in-law Simran on her head with Sattur. On this basis, the FIR was lodged. The investigation was carried out. Ravindrasingh had succumbed to injuries.

4. Learned Counsel for the Petitioner has not annexed the entire charge-sheet. However, the learned APP produced a copy of the charge-sheet in the Court, which I have perused. There is a statement of the injured Simran Sing giving specific role to the present Petitioner. Her statements and the F.I.R. are supported by other eye witnesses Jagvirsing, Jagatkaur etc. The statement of the

first Informant recorded under Section 164 of Cr.P.C. does not specifically name the present Petitioner, but it can be seen from the charge-sheet that there is strong material against the present Petitioner.

5. The Petitioner preferred an Application at Exhibit D-9 before the trial Court with the averment that, at the relevant time, the Petitioner was not at the spot which could be established through the record of his mobile phone. It was prayed for direction to be issued to the Nodal Officer of BSNL to produce CDR and tower location of the said mobile phone in the interest of justice. This Application was rejected by the impugned order. Therefore, the Petitioner has preferred the present Petition. Learned Counsel for the Petitioner submitted that it is vital for the Petitioner that CDR is preserved because that is the only way he can establish his defence during trial and the Petitioner be given full opportunity to establish his defence. According to Mr. Sarada, the CDR record is preserved only for one year and if it is destroyed, after that, the Petitioner would suffer irreparable loss as the data would be lost forever. He submitted that in spite of a

strong case against the Petitioner, he should be given sufficient opportunity to establish his defence.

6. Learned APP submitted that, in view of the strong material and the statements of the eye witnesses including the statement of the injured eye witness, the investigating agency does not think it fit to preserve or call for the record of the mobile phone of the present Petitioner.

7. I have considered these submissions and I have perused the impugned order. From the charge-sheet it is clear that there is strong material against the present Petitioner. However, that material will have to be translated into evidence during trial and the Accused should get full opportunity to establish his defence. Apprehension expressed by Mr. Sarada that, after one year the data of mobile phone will be lost forever has to be considered. Therefore, at this stage, it is necessary to issue direction to the investigating agency to take steps to at least preserve that data, so that, if necessary, and if the trial Court thinks it fit, the data can be produced during trial. Therefore, that order at this stage is

necessary. The learned trial Judge has made a strange observation that the concept of “interest of justice” is foreign to criminal trial. I am unable to understand this particular reasoning of the learned Judge. After all, in every litigation, the Court has to keep the concept of “interest of justice” to the forefront in deciding any case. Therefore, the impugned order is not based on sound reasoning.

8. Considering the above discussion, at this stage, following order is passed:

O R D E R

- i) The investigating agency is directed to take steps to preserve all the records in the form of CDR, tower location and other records in connection with mobile phone No. 9405573787.
- ii) The trial Court shall decide the relevance and admissibility of such record, if the Petitioner leads proper foundation in his defence during trial, in respect of the necessity to bring this

material on the record of the trial.

iii) The trial Court shall exercise its discretion in accordance with law regarding granting permission to the Petitioner to produce such record in the evidence before the trial Court.

iv) With these observations, the Petition is disposed of.

(SARANG V. KOTWAL, J.)