

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4226 OF 2022

WITH

INTERIM APPLICATION NO.4401 OF 2022
IN
CRIMINAL WRIT PETITION NO.4226 OF 2022

WITH

INTERIM APPLICATION NO.4402 OF 2022
IN
CRIMINAL WRIT PETITION NO.4226 OF 2022

WITH

INTERIM APPLICATION NO.742 OF 2023
IN
CRIMINAL WRIT PETITION NO.4226 OF 2022

Vinayak Thaware Chouhan

.... Petitioner

versus

The State of Maharashtra

.... Respondents

.....

- Ms. Arati Ajit Ranade (Appointed) Advocate for Petitioner.
- Mr. Arfan Sait, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 09th AUGUST, 2023

P.C. :

1. This is a Criminal Writ Petition sent through jail. The Petitioner is the original accused No.2 in the Sessions Case

No.165 of 2019 pending before the Additional Sessions Judge, Panvel. The prayer in the Petition is for direction to furnish CDR/SDR in respect of the following mobile numbers for the period between 18/12/2014 to 30/12/2014 -:

9423072897 - Suresh Shendpure
9967076777 - Mohd. Saiyad Abdul Gafur
9702844459 - Vinayak Chouhan (Petitioner)

2. It appears that the case of prosecution is that Suresh was present at the scene of offence at the time of offence. The Petitioner wanted to demonstrate that Suresh was somewhere else. As far as the Petitioner himself and the other witness Gafur are concerned, his contention is that they were not present at the spot at the relevant time. The memo of the Petition mentions that the Petitioner had preferred applications on several occasions for production of CDR/SDR of his mobile phone numbers before the Trial Court u/s 91 of Cr.P.C. According to him he had preferred applications on 03/07/2017, 06/04/2018 and 05/01/2021. But the Trial Court had not permitted production of those CDR/SDR.

3. The Interim Applications in the main Petition are preferred with the same prayers for issuing directions to the prosecution to furnish the CDR/SDR of those mobile numbers.
4. Learned counsel appointed for the Petitioner pointed out that the learned Special Public Prosecutor appearing in the sessions case, vide his say dated 08/07/2021 had given no objection to call the CDR/SDR as prayed for in the application at Ex.109.
5. The Petitioner is facing serious charges including the charge u/s 302 of the Indian Penal Code. The trial is still in progress. Therefore, in the interest of justice, it is necessary that the Petitioner/accused is given full opportunity to prove his innocence and to prove that the prosecution case is false. Issuing directions for production of those CDR/SDR would be in the interest of justice. The ultimate aim of the Court should be to find the truth and if the accused deserves a fair chance, the Court should see to it that he gets a fair chance.

6. In the present case, the Petitioner has been filing the application with similar prayer right from 03/07/2017. In my opinion, a fair chance needs to be given to him. This would of course be subject to the availability of the CDR/SDR after so many years.

7. Learned APP submitted that the Trial is still in progress. Therefore, at this stage, there should not be any impediment in the progress of the Trial if directions are issued for production of such CDR/SDR. Once the documents are produced, the copies of those documents can be given to the accused and to the prosecution. The learned Judge himself can look into those documents to see their relevance. If those are found to be relevant and important for the decision of the case, they can be brought on record either through the prosecution witnesses or through the defence witnesses or even through the Court witnesses. That should be left open to the discretion of the

respective parties and the Court. This course of the action is fair and would not cause prejudice to any of the parties.

8. Hence, the following order :

ORDER

(i) The learned Additional Sessions Judge, Panvel shall direct the concerned Officer/witness to produce the CDR/SDR in respect of following mobile numbers before the Court -:

9423072897 - Suresh Shendpure
9967076777 - Mohd. Saiyad Abdul Gafur
9702844459 - Vinayak Chouhan (Petitioner)

(ii) If those documents are available, the copies thereof should be given to the accused and to the learned Special Public Prosecutor.

(iii) The learned Trial Judge shall also peruse those documents and decide their relevance. It shall be open for the prosecution or the accused or even the Court to examine the necessary witness to produce those documents on record if they are available and are relevant.

- (iv) This should be done at the earliest.
- (v) A copy of this order shall be sent to the Petitioner, who is in jail and also to the Trial Court at the earliest.
- (vi) With these observations the Writ Petition and the connected applications are disposed of.

(SARANG V. KOTWAL, J.)