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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 835 OF 2023.

Akbar Hussain Shafi Hussain

@ Raju Batla @ Raju Bhai

.. Appellant

vs.

The State of Maharashtra and Anr.

.. Respondents

Mr. Mateen Shaikh a/w. Ms. Muskan Shaikh, Ejaz Shaikh, Razique Shaikh,
Arshad Shaikh, Afrin Khan and Muzammil Shaikh for the Appellant

Mr. S.V. Gavand, APP for the State

Mr. Sandesh Patil i/b. Chintan Shah for Respondent NIA

**CORAM: A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 5th JANUARY, 2024

P. C.:-

1) This is an Appeal under Section 21(4) of the National Investigation Agency Act (NIA Act), impugning the Order dated 20th June, 2023 passed below Exhibit 117 in Special Case No. 681 of 2020 by the learned Special Judge, Greater Bombay, disposing of the application of the Appellant for return of his mobile handset i.e. Samsung Galaxy S9, Model No.SM-G950FD

1.1) The trial Court has rejected the said Application predominantly on the ground that, the mobile handset of the Appellant is primary piece of evidence and will be required during the trial.

2) Perusal of record indicates that, during the course of investigation,

the said mobile phone allegedly used by the Appellant in commission of the present crime, was seized by the Investigating Agency. The said mobile was sent to Forensic Science Laboratory for its necessary analysis. The report from Forensic Science Laboratory is received and the copy of the same has been served upon the Appellant and co-accused separately.

2.1) It is the contention of the Appellant that, he requires the said handset which contains the numbers of Government Officers for building his defence in the probable trial.

3) Record further indicates that till the date, the trial Court has not framed charge in the present case and it will take considerable time to conclude the trial. In view of the above, we are of the opinion that the said mobile handset can be returned to the Appellant during the pendency of the trial.

4) Respondent No.1 is directed to return the mobile handset of he Appellant i.e. Samsung Galaxy S9, Model No.SM-G950FD on his furnishing Undertaking to the trial Court that, the Appellant will produce the said same handset at the time of trial and that he will not sale or change the nature of the said handset without prior permission of the trial Court.

4.1) Any other reasonable condition which the trial Court may deem appropriate be imposed upon the Appellant.

- 5) Subject to filing the said Undertaking by the Appellant before the trial Court, the handset of the said mobile phone be returned to him.
- 6) In view of the above, the impugned Order dated 26th February, 2023 below Exhibit 117 is set aside and the Appeal is allowed.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)