

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 3354 OF 2024****IN****CRIMINAL WRIT PETITION NO. 6526 OF 2021**

Rajendra Maruti Kamble

.....Applicant

Vs.

Sr. Inspector of Police,
Azad Maidan Police Station,
Mumbai & Anr.

.....Respondents

Mr. Prosper D'Souza appointed Advocate by Legal Aid for the Applicant.
Smt. Anamika Malhotra, Addl.PP a/w Smt. Madhavi H. Mhatre, A.PP for
the Respondent-State.

**CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.**
DATE : 23rd AUGUST 2024.

PC.:-

- 1) This Interim Application is filed for a relief to transfer C.C. No.1555/Misc/2020 to the C.B.I. and for direction to conduct proper investigation of the same by it and for other consequential reliefs.
- 2) Heard Mr. D'Souza, learned Advocate appointed by Legal Aid to represent and espouse the cause of Applicant and Smt. Malhotra, Addl. PP for the State. Perused entire record.
- 3) At the outset we may note hear that, most of the reliefs prayed herein are legally not tenable and therefore principle relief as prayed for by

the Applicant is noted hereinabove.

3.1) Record indicates that, on 1st July 2020, the Applicant had purchased a second-hand/old mobile phone of Samsung A-7 brand from Ariba Corner, Manish Market for his personal use. That, on 9th July 2020 at about 3.30 p.m., he was having a nap on bus stop No. 1038 and at that time, the said mobile phone was kept in his upper pocket of shirt. After sometime when he awakened, he found that the said mobile phone was not in place. He therefore asked one boy by name Wasim who was present there, to which the said Wasim told that he was not aware of anything. He also enquired with the people residing on the said footpath however nobody could assist him. He therefore realized that, his mobile phone has been stolen by some unknown person. In this brief premise, the said crime is registered under Section 379 of I.P.C..

4) The Respondent No.1 Police Station after investigating the crime reached to the conclusion that, though the allegation of Applicant is true, it could not be detected till date and accordingly they filed 'A-Summary Report' in the Court of learned Additional Chief Metropolitan Magistrate, 64th Court, Esplanade, Mumbai and the said report is numbered as '1555/Misc/2020'. The said 'A' Summary Report has been accepted by the learned Magistrate by its Order dated 7th November 2020.

5) The Petitioner thereafter filed the aforementioned Writ Petition for the reliefs as prayed for therein. This Court by its Order dated 17th October,

2022 disposed off the said Petition, as the Police have already filed 'A-Summary Report'.

6) In view of the aforestated facts, present Application is filed for transfer of the said investigation to C.B.I. to conduct proper investigation.

7) Mr. D'Souza, learned Advocate appointed by the Legal-aid Committee to represent the Applicant pointed out to us all the record to us and submitted that, as the concerned Police Station has not effected proper investigation, the investigation of said crime may be transferred to C.B.I.

8) Perusal of record indicates that, Respondent No.1 police station had diligently investigated the crime reported by Applicant as informant and when they realized that, the allegation in the FIR is true but cannot be detected, they have filed 'A-Summary Report'. As noted earlier, the offence alleged by the Applicant is under Section 379 of the IPC. Perusal of record clearly indicates that, the Respondent No.1 police station has properly carried out investigation till date and we are of the considered view that, this is not a fit case to transfer the investigation of the crime to C.B.I.

9) According to us the present Application is thoroughly misconceived and not maintainable in law.

10) In view of the above, Interim Application is accordingly disposed off.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)