

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

CRIMINAL WRIT PETITION NO. 3545 OF 2025

Vishwadeep Mohan Sawant

...Petitioner

Vs.

The State of Maharashtra

...Respondent

Dr. Uday Warunjikar a/w Mr. Sumit S. Kate	Advocate for the Petitioner
Ms. S. E. Phad	APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 08th JULY 2025

P. C. :-

1. Heard learned Advocate Dr. Warunjikar for the Petitioner and learned APP for the Respondent-State. This is the third round of litigation. There is an F.I.R. registered with the Kadegaon Police Station for the offences punishable under Sections 465, 468, 182, 193, 199, 419, 205 read with 34 of the Indian Penal Code against one Hamid Gulabmohiddin Mulani-Mulla and others. The offence came to be registered as per the direction given under Section 156 of the Criminal Procedure Code. The matter is still under investigation. The Investigating Officer wants the custody of two partition lists. Out of them, he already received one partition

list dated 15.06.1974 from one Masjid Aayub Mulla, whereas the list which he has not received is dated 15.06.1976. That is why he made a request on 12.02.2024 before the learned JMFC, Kadegaon. The learned Judge, as per order dated 03.03.2025, has rejected the said request. That order is reasoned. The reason given does not appeal to conscience. It seems that the learned Judge was too technical. She has unnecessarily emphasized on her capacity of presiding over as Judicial Magistrate first Class and presided over as Joint Civil Judge Junior Division. The said document is part of the record of RCS No. 107 of 2021 which is pending in the same Court which is presided over by her.

2. Earlier to this order, there was an occasion for this Petitioner/Applicant to approach this Court and on 14.12.2023, in Criminal Writ Petition No. 2322 of 2023, this Court has permitted the Investigating officer to take proper steps to collect those two documents. When the steps were taken, the learned Magistrate, as per order dated 18.03.2025 has again rejected that request. This Court as per order dated 08.04.2025 passed in the Criminal Writ Petition No. 1579 of 2025 was pleased to set aside the said order for the reason that it is an unreasoned order and directed the learned Magistrate to reconsider the matter afresh.

3. On this occasion, even though the order is reasoned, the reason does

not appeal to conscience. The impugned order needs to be set aside.

4. Now the question is: the offence bearing CR No. 225 of 2023 is under investigation and yet Police have not filed the final report, that is why the proposed accused in that offence are not before the Court. It is matter of the record that the said partition list dated 15.06.1976 is part of the record in RCS No. 107 of 2021.

5. Considering the events that have taken place earlier, this Court feels that the investigating officer can be granted liberty to file an application before the Court which is seized of the Regular Civil Suit No. 107 of 2021. If it is done, it will serve two purposes:- One, there will not be any technical objection, though it is unjustified about the Judge not having the custody of the suit and secondly, the party in that suit who has filed that partition list can also be heard.

6. In view of that following directions are given:-

- a) The investigating Officer of C.R. No. 225 of 2023 is at liberty to file an application for getting the custody of the partition list dated 15.06.1976 by filing the necessary application before the Court seized of RCS No. 107 of 2021.
- b) The learned Judge is at liberty to decide such request after hearing the parties to the suit.

c) Considering the earlier round of the litigation, the learned Civil Judge is directed to decide such request within two months from the date of filing the said report.

7. With the above observation, the Writ Petition is disposed of.

[S. M. MODAK, J.]