

**State Vs. Anil and Anr. (through Applicant Praveen)**

**FIR No. 146/2020**

**PS Rajender Nagar**

**02.07.2020**

Present: Applicant Praveen Kumar through VCC over Cisco Webex)  
Sh. Vakil Ahmad, Ld. APP for State (through VCC over Cisco Webex)  
IO/ASI Daryao Singh (through VCC over Cisco Webex)

**Matter is heard through VCC over CISCO Webex Application from 2:09 PM to 2:17 PM.**

The present urgent application was filed on behalf of the applicant on email id of this court on 01.07.2020. Same is taken up for hearing through VCC in view of Circular No. 6797-6899/CMM/Central/DR/2020 dated 29.06.2020.

This order shall dispose off the application for release of mobile phone on Superdari, moved on behalf of applicant Praveen Kumar.

In furtherance of directions issued through email dated 01.07.2020, Scanned copy of status report has been sent by IO/ASI Daryao Singh, through the email id of the court, wherein it has been stated that on 14.06.2020, upon the complaint made by applicant Praveen Kumar regarding snatching of his mobile phone, accused persons namely Anil Kumar and Sandeep Kumar were nabbed from the spot and the recovery of mobile phone was effected from pillion rider Anil Kumar, in presence of the applicant. IO submits that the applicant has not produced the bill of his mobile phone for verification of ownership and TIP of the mobile phone is yet to be conducted. Therefore, same be not released until its TIP is conducted.

The scanned copy of the seizure memo of the mobile phone is also sent by the Naib Court, PS Rajender Nagar through email/whatsapp. Same is also perused.

For the purposes of identity applicant has sent scanned copy of his Aadhar ID card.

*On perusal of the report of IO/ASI Daryao Singh, it clearly emerges that the recovery of alleged mobile phone was effected from possession of accused Anil Kumar on the spot of occurrence and in the presence of applicant/complainant Praveen Kumar. Even perusal of the seizure memo dated 14.06.2020, pertaining to mobile phone is also revealing that same was seized in presence of the applicant Praveen Kumar. If that be so, there exists no occasion for getting the TIP of same conducted by the IO. Further, as per the record, the FIR in question was registered on*

  
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14.06.2020 and there is no plausible reasons as to why despite lapse of 20 days, the IO has not moved the court for conducting TIP of the case property, if he was of the view that same is essential for investigation purposes. Even otherwise also, the ownership/entitlement of the applicant over the mobile phone in question can be verified by the IO through the concerned vendor from whom applicant has purchased the mobile phone in question. Needlessly, the IO can procure the duplicate bills of the mobile phone from the concerned vendor so as to verify the ownership/entitlement of applicant over same. Due to lapses on the part of the IO, the applicant cannot be deprived of from the custody of mobile phone in question, if he is the rightful owner thereof.

In view of discussion made above and also keeping in view directions of **Hon'ble High Court of Delhi** in matter of "**Manjit Singh Vs. State**" in CrI. M.C. No.4485/2013 dated 10.09.2014, the aforesaid mobile phone in question, be released to the applicant / owner subject to the following conditions:-

1. IO shall verify the ownership/entitlement of applicant over same through the concerned vendor from whom applicant has purchased the mobile phone in question. Needlessly, the IO can procure the duplicate bills of the mobile phone from the concerned vendor.
2. If applicant is found to be rightful owner of the mobile phone in question, it be released to him only subject to furnishing of indemnity bond as per its value, to the satisfaction of the concerned SHO/ IO subject to verification of documents.
2. IO shall prepare *detailed panchnama* mentioning the colour, IMEI NO., ownership and other necessary details of the mobile phone.
3. IO shall take the *colour photographs* of the mobile phone from different angles and also of the IMEI number of the mobile phone.
4. The photographs should be attested and counter signed by the complainant/applicant and accused.
5. IO is directed to verify the bill/invoice (or copy thereof) of the mobile in question and release the same to the applicant.

  
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Before parting with this order, it is pertinent to mention here that upon query made by this court, IO/ASI Daryao Singh could not give any satisfactory reply as to why he has not moved the court for conducting the TIP of the mobile phone in question till date, if he was of the opinion that such course is necessary for effective investigation the case. Even, Ld. APP for the State concedes that TIP of the mobile phone in question is an exercise of futility in present case, as the seizure memo dated 14.06.2020 clearly reflects that mobile phone in question was seized by the IO in presence of the applicant for spot of occurrence, itself. Merely, for verifying the ownership of applicant over mobile phone in question, the TIP of same cannot be conducted when the identity thereof is not otherwise in dispute. Furthermore, the ownership of applicant over the mobile phone in question can be verified by the IO through the concerned vendor from whom applicant has purchased the mobile phone in question.

At this juncture, it is also worthwhile to point out that the person who is entitled to the seized property cannot be deprived from its custody when same is no more required for purposes of investigation, on the whims and fancies of the IO (references drawn from **Sunderbhai Ambalal Desai Vs. State of Gujarat (2002) 10 SCC 283 and Manjeet Singh Vs. State Crl. M.C. No.4485/2013**).

Also taking note of the present unprecedented situation which has arisen on account of Covid-19 pandemic, which has also necessitated for the norms to maintain social distancing so as to prevent outspread of pandemic, it is the need of the hour on the part of IOs, not to shirk away from exercising the powers vested in them vide Section 102(3) Cr.PC qua release of the articles/case property, in accordance with law. However, in the present case, in sheer ignorance of the present unprecedented situation as well as the law discussed above, the IO has not adopted any of the courses discussed above, due to which the rightful owner of the case property is unnecessarily suffering. Accordingly, let copy of this order be sent to DCP concerned for taking note of the conduct of IO, with a further direction to impress upon the IOs within his jurisdiction, to use the provisions of Section 102(3) Cr.PC, for release of the articles/case property, liberally.

Scanned copy of this order is being sent to Sh. Awdhesh Kumar Rai (Reader) through whatsapp/email for transmitting the same to the applicant and also to the DCP/SHO/IO

  
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concerned, for compliance.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.



**(RISHABH KAPOOR)**  
**MM-03 (Central), THC, Delhi**  
**02.07.2020**