

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CM(M) No. 247/2025
CM No. 5828/2025

Rahat Hafiz

.....Appellants

Through: Mr. A.M Dar, Sr. Advocate with
Mr. Danish Dar, Advocate.

Vs

UT of J&K

..... Respondents

Through: Mr. Ravinder Gupta, AAG

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE
ORDER
15.09.2025

1. The petitioner, through the medium of present petition has invoked supervisory jurisdiction of this Court under Article 227 of Constitution of India for challenging order dated 05.08.2025 passed by learned Additional Sessions Judge, Jammu whereby application of respondent-prosecution for recording the statement of PW-42 Zahoor Ahmed, FSL expert through video conference has been allowed.

2. It appears that the petitioner and co-accused are facing trial before the Court of learned Additional Sessions Judge (hereinafter referred to as "trial Court") in a case arising out of FIR No. 82/2013 for offences under Sections 302, 364, 120-B, 201, 468 RPC and 74 IT Act registered with Police Station, Peer Mitha, Jammu. It also appears that during trial of the case, the respondent-prosecution made an application before the learned trial Court seeking permission to examine PW-42-Zahoor Ahmed, FSL expert through video conferencing. In the application, it was

submitted that the said witness was summoned a number of times but because he is unable to travel to Jammu from Srinagar due to health reasons, as such, his statement could not be recorded. It was also submitted that the witness is suffering from serious health issues and has undergone multiple treatments.

3. The petitioner, who happens to be accused No. 1 before the trial Court, resisted the application on the ground that examination of a witness through virtual mode is not permissible under Criminal Procedure Code particularly in a case of murder which is of sensitive nature. It was submitted by the petitioner-accused before the trial Court that FSL expert is an important witness as such, his physical presence in the Court for recording his statement is essential. The petitioner-accused also disputed the ailment of the witness by claiming that there is no medical record to support the said assertion of the prosecution.

4. Learned trial Court after hearing the parties, came to the conclusion that even if the health condition of the witness is not taken into account, still then, the Court has power to examine a witness through virtual mode. Accordingly, the application of the prosecution was allowed.

5. The petitioner has challenged the impugned order on the grounds that in the absence of a consent by the parties, the trial Court could not have permitted examination of the witness through video conference. It has been submitted that in terms of the provisions contained in Cr.PC, physical presence of the witness before the Court is mandatory. It has been submitted that the witness is a retired Government servant and he has expressed his

inability to appear before the Court by travelling from Srinagar to Jammu on health grounds without there being any medical record to support the same. It has been further contended that the present case pertains to murder trial which is a serious matter and therefore, an important witness like FSL expert cannot be allowed to be examined through virtual mode as it will cause grave prejudice to the petitioner/accused.

6. I have heard learned Senior counsel appearing for the petitioner and I have also considered the material on record.

7. The question that arises for determination in this petition is as to whether a witness can be permitted to be examined by a criminal Court through video conference. In this regard, it has to be borne in mind that Section 353 of the J&K Cr.PC which is applicable to the present case, lays down that all evidence has to be taken in presence of the accused or when his personal attendance is dispensed with, in presence of his pleader except as otherwise expressly provided for. Thus, evidence of a witness has to be mandatorily recorded in the presence of the accused.

8. Section 308 of BNSS also provides that all evidence taken in course of trial or other proceedings shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his advocate including through audio-video electronic means at the designated place to be notified by the State Government. Thus, in the said provision, it has been provided that the evidence can be taken through audio video electronics to be notified by the State Government. Section 530 of the BNSS clarifies that all trials, inquiries and proceedings under the Sanhita

including recording of evidence in inquiries and trials may be held through electronic mode by use of electronic communication or use of audio-video electronic means.

9. Thus, while J&K Cr.PC does make any provision for use of electronic communication or use of audio-video electronic means in recording evidence during inquiry or trials, the same has been provided for in BNSS. Since, in the present case, the trial is being conducted in accordance with the provisions contained in J&K Cr.PC, therefore, we have to understand as to what is meant by the expression “in presence of accused” as contained in Section 353 of J&K Cr.PC. It has to be seen whether, the virtual presence of accused at the time of recording of statement of a witness would satisfy the requirements of Section 353 of J&K Cr.PC.

10. The aforesaid aspect of the matter came up for consideration before the Supreme Court in the case of **State of Maharashtra Vs. Dr. Praful B. Desai; AIR 2003 (4) SCC 601**. In that case, the matter was relating to recording of statement of a witness in a criminal trial that was being held in accordance with provisions contained in Section 273 of Cr.PC. It is pertinent to note that provisions contained in Section 273 of Cr.PC are akin to the provisions contained under Section 353 of the J&K Cr.PC. The Supreme Court while examining this aspect of the matter has held as under:-

“19. At this stage we must deal with a submission made by Mr Sundaram. It was submitted that video-conferencing could not be allowed as the rights of an accused, under [Article 21](#) of the Constitution of India, cannot be subjected to a procedure involving "virtual

reality". Such an argument displays ignorance of the concept of virtual reality and also of video conferencing. Virtual reality is a state where one is made to feel, hear or imagine what does not really exists. In virtual reality one can be made to feel cold when one is sitting in a hot room, one can be made to hear the sound of ocean when one is sitting in the mountains, one can be made to imagine that he is taking part in a Grand Prix race whilst one is relaxing on one sofa etc. Video conferencing has nothing to do with virtual reality. Advances in science and technology have now, so to say, shrunk the world. They now enable one to see and hear events, taking place far away, as they are actually taking place. To take an example today one does not need to go to South Africa to watch World Cup matches. One can watch the game, live as it is going on, on one's TV. If a person is sitting in the stadium and watching the match, the match is being played in his sight/presence and he/she is in the presence of the players. When a person is sitting in his drawing-room and watching the match on TV, it cannot be said that he is in presence of the players but at the same time, in a broad sense, it can be said that the match is being played in his presence. Both, the person sitting in the stadium and the person in the drawing-room, are watching what is actually happening as it is happening. This is not virtual reality, it is actual reality. One is actually seeing and hearing what is happening. Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence. In fact he/she is present before you on a screen. Except for touching, one can see, hear and observe as if the party is in the same room. In video

conferencing both parties are in presence of each other. The submissions of Respondents counsel are akin to an argument that a person seeing through binoculars or telescope is not actually seeing what is happening. It is akin to submitting that a person seen through binoculars or telescope is not in the "presence" of the person observing. Thus it is clear that so long as the Accused and/or his pleader are present when evidence is recorded by video conferencing that evidence is being recorded in the "presence" of the accused and would thus fully meet the requirements of [Section 273](#), Criminal Procedure Code. Recording of such evidence would be as per "procedure established by law".

20. Recording of evidence by video conferencing also satisfies the object of providing, in Section 273, that evidence be recorded in the presence of the Accused. The Accused and his pleader can see the witness as clearly as if the witness was actually sitting before them. In fact the Accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded Court room. They can observe his or her demeanour. In fact the facility to play back would enable better observation of demeanour. They can hear and rehear the deposition of the witness. The Accused would be able to instruct his pleader immediately and thus cross- examination of the witness is as effective, if not better. The facility of play back would give an added advantage whilst cross-examining the witness. The witness can be confronted with documents or other material or statement in the same manner as if he/she was in Court. All these objects would be fully met when evidence is recorded by video conferencing. Thus no prejudice, of whatsoever nature, is caused to the

Accused. Of course, as set out hereinafter, evidence by video conferencing has to be on some conditions.”

11. From the aforesaid analysis of legal position on the subject, it is clear that Supreme Court has clearly held that when the accused and his pleader can see the witness as clearly as if the witness was sitting before them, it would satisfy the requirements of physical presence of the witness in the Court during his examination.

12. A Division Bench of the High Court of Delhi in the case of **International Planned Parenthood Vs. Madhu Bala Nath; AIR 2016 DELHI 71** has, while dealing with the issue as to in which cases and circumstances request for recording the statement of a witness through video conferencing should be accepted held that the Court should be liberal in granting such a prayer. The Court further held that there may be circumstances or situations where physical presence of a witness may be necessary and required by the Court and in such situations, it would be obligatory on the witness to be present in Court. Where a witness or a party requests that the evidence of a witness may be recorded through video conferencing, the Court should be liberal in granting such a prayer.

13. Adverting to the facts of the present case. The witness sought to be examined through video conferencing is admittedly an expert who has rendered his expert opinion in the case. Thus, he is a formal witness and not a material witness. Chapter XLI of the J&K Cr.PC lays down special rules of evidence. Section 510 of J&K Cr.PC which falls in the said chapter provides that any document purporting to be a report under the hand of any Chemical Examiner

or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under the Code, may be used as evidence in any inquiry, trial or other proceeding under the Code, meaning thereby that the report tendered by an expert who satisfies the requirements of Section 510 is admissible in evidence even without calling the witness to the Court and it is only if the prosecution or the accused prays for summoning of such witness that he may be called to the Court for his examination. Similarly, Section 510-A of the J&K Cr.PC makes a provision for recording statement of a witness whose evidence is of a formal character by way of affidavit.

14. In the face of the aforesaid provisions, the witness sought to be examined, who is an expert of FSL is not mandatorily required to be physically present for recording his statement. It is not a case where the witness sought to be examined has to either identify the accused or his evidence is of such a nature as would make it essential for him to be physically present in the Court. Since the law provides that requests for examination through video conferencing are to be liberally granted and having regard to the fact that the witness sought to be examined through video conferencing is of a formal character, the discretion exercised by the trial court in allowing the prayer of the prosecution does not deserve to be interfered with.

15. Learned Senior counsel for the petitioner has also contended that it would not be possible for the petitioner-accused to confront the witness with the documents and the material unless he

is physically present before the Court. In this regard, it is to be noted that the High Court of Jammu and Kashmir has framed High Court of J&K and Ladakh Video Conferencing for Court Rules, 2021 which have been notified on 15.11.2021. Rule 8 of the said rules provides the procedure for examination of the persons. Rules (8.4) and (8.5) of the said Rules provide the manner in which the documents sought to be relied upon are transmitted to the witness. Similarly, Rule 9 of the said Rules provides for the procedure relating to exhibiting or showing documents to witness or accused at a remote point. These rules lay down comprehensive guidelines for the Courts regarding the manner in which statements of witnesses through video conferencing are to be recorded. Therefore, there would be no difficulty either for the defence or for the prosecution to record the statement of the expert through video conferencing.

16. For what has been discussed hereinbefore, I do not find any merit in this petition. The same is, accordingly, **dismissed**.

(SANJAY DHAR)
JUDGE

JAMMU
15.09.2025

Tarun/PS

Whether the order is speaking?	Yes
Whether the order is reportable?	Yes