

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 550 OF 2021

WITH

**CRIMINAL APPLICATION NO. 1958 OF 2021 IN CRIMINAL WRIT
PETITION NO. 550 OF 2021**

Dishant s/o Raja Salve,
Age; 26 years, Occ; Student,
R/o; House No. 1-12-91,
GHATI Gautam Nagar,
Aurangabad-431001.

...Petitioner

VERSUS

1. The Police Inspector,
Police Station Osmanpura,
Aurangabad.
2. The In-charge Officer,
Safe City Control Room,
(Safe City Project Aurangabad City),
Aurangabad.
3. The Branch-Manager,
State Bank of India,
Branch (21902) Osmanpura,
19, Ground Floor, Pranam Complex,
Besides Sant Eknath Rang Mandir,
Osmanpura, Aurangabad.
4. The Branch Manager,
IDBI Bank, Renuka Complex,
CTS No. 17325, Opposite Besides Sant
Eknath Rang Mandir, Osmanpura,
Aurangabad.

...Respondents.

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Advocate for Petitioner : Mr. Sanket Kulkarni h/f Mr. Avinash R.
Salve

APP for Respondent Nos. 1 and 2 -State : Mrs. G.L.Deshpande
Advocate for Respdt. No. 4 : Mr.Akhilesh Tripathi h/f Mr. A.S. Pathak

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CORAM : SURENDRA P.TAVADE , J.

DATE : 21st September, 2021.

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of learned counsel for both the parties, heard finally at the admission stage.

2. The petitioner is challenging the impugned order passed by the 9th Judicial Magistrate First Class, Aurangabad in Criminal M.A. No. 2734 of 2018 dated 05.03.2021 whereby, an application of the petitioner calling CCTV footage (Cameras/Hard Disk) from State Bank of India, I.D.B.I. Bank, Branch Osmanpura, Rajdarbar Men's Emporium, Osmanpura; IDBI Bank Osmanpura; Mahi Ladies Emporium, Osmanpura; Jay Heritage Apartment, Osmanpura; Utsav Chowk, Osmanpura; Traffic Signal near CIDCO Bus Stand and Osmanpura Police Station, etc. was rejected. It is contended that on 19.07.2018 the petitioner was detained by Osmanpura police, Aurangabad, but he was produced before the J.M.F.C. Court on 21.07.2018. It is contended that from 19.07.2018 to 21.07.2018

police took the petitioner to various places through their vehicle including aforesaid banks. The visit of the petitioner along with police have been captured in CCTV Cameras of Banks and other establishments, hence the petitioner has filed an application for directing police to obtain CCTV footage of State Bank of India and I.D.B.I. Bank etc. The said application came to be rejected, hence the petitioner had filed a Criminal Writ Petition No. 1686 of 2018. This Court had directed to the Trial Court to decide the application of the petitioner afresh. This Court also directed to the Trial Court to consider the directions/guidelines given by this Court in **Kamal Ahmed Mohammed Vakil Ansari & Ors Vs The State of Maharashtra 2014 ALL MR (Cri) 5055**, but the trial Court has not considered such directions/guidelines in proper perspective and rejected the application of the petitioner. Accordingly, the petitioner has filed Criminal Misc. Application No. 2734 of 2018 and requested respondent Nos. 1 to 4 to provide CCTV footage of various banks including S.B.I. and I.D.B.I. banks and other establishments. The said application came to be rejected.

3. It is contended that the petitioner is seeking production of CCTV footage from aforesaid banks and other establishments. The investigating Officer has written letters to the S.B.I. and I.D.B.I. banks but said banks replied that the CCTV footage are not available

with them due to passage of time or fault in software. It is contended that except letters of banks no statements of bank officers were recorded by the Investigating Officer. It is contended that the data in the hard disks can be revived or retrieve, but no steps are taken by the Investigating Officer to collect the hard disks of CCTV cameras installed in the banks and other establishments, where the petitioner was taken by the police. It is contended that the said CCTV footage are the crucial piece of evidence in favour of the petitioner to prove his innocence. It is contended that it will take some time to conclude the trial and thereafter the petitioner would get chance to lead defence evidence and by that time crucial evidence may not be available with him. Hence it is prayed that as per the ratio laid down in **Kamal Ahmed** (supra), the Investigating Officer be directed to collect the CCTV footage from Cameras and/or hard disks of aforesaid banks and other establishments and record the statements of said witnesses. It is contended that the impugned order passed by the J.M.F.C. Aurangabad be set aside.

4. The respondent-State appeared and filed its affidavit through Mrs. Geeta Motichand Bagwade, Police Inspector, Osmanpura Police Station, Aurangabad (City). It is contended that the petitioner was prosecuted for the offence punishable under Section 489-A, 489-B, 489-C and 489-D read with Section 34 of the

Indian Penal Code (for short 'IPC'). After completion of the investigation, charge-sheet has been filed against the petitioner along with other co-accused persons. The investigating officer recorded the statements of 18 witnesses and seized the counterfeit currency or bank notes from the petitioner and other accused persons under panchanama.

5. It is contended that prior to the filing of the charge-sheet the petitioner had filed Criminal Misc. Application No. 2089 of 2018, wherein, the learned J.M.F.C., Aurangabad had directed the investigating officer to preserve and supply CCTV footage of S.B.I. and I.D.B.I. Banks, Branch Osmanpura Rajdarbar Men's Emporium, Osmanpura; IDBI Bank, Osmanpura, Mahi Ladies Emporium, Osmanpura, Jay Heritage Apartment, Osmanpura; Utsav Chowk, Osmanpura; Traffic Signal near CIDCO Bus Stand and Osmanpura Police Station for the period from 19.07.2018 to 25.07.2018. The investigating officer had written letters to above establishments for securing CCTV footage but the said establishments replied that the CCTV footage is not available due to several reasons including over capacity or technical difficulties in the hard-disks. Accordingly the said application came to be dismissed.

6. It is contended that the investigating officer has taken

pains to secure the CCTV footage from S.B.I. and I.D.B.I. banks and other establishments but the said material was not made available with the said establishments. It is contended that the charge is not framed against the petitioner therefore there is no question of calling defence evidence of the petitioner. It is contended that the trial Court has considered the law laid down in **State of Orissa vs. Debendra Nath Pandhi reported in reported in (2003) 2 SCC 711** and rightly dismissed the application and there is no need to interfere in the impugned order of the trial Court.

7. Heard Mr. Sanket Kulkarni h/f Mr. Avinash R. Salve, the learned counsel for the petitioner, Mrs. G.L. Deshpande, the learned APP for the respondent Nos. 1 & 2 -States and Mr. Akhilesh Tripathi h/f Mr. A.S. Pathak the learned counsel for respondent No. 4.

8. I have perused the order passed this Court in Criminal Writ Petition No. 1686 of 2018. It appears that the petitioner has sought production of CCTV footage of State Bank of India, D.I.B.I. Bank and other establishments. No doubt, he has also sought copy of the same for his perusal. Admittedly the charge-sheet is filed but the charge is not framed against the petitioner and others. The application filed by the petitioner bearing Criminal M.A. No. 2734 of 2018 was filed for production of CCTV footage, which may help the

petitioner to prove his defence. The petitioner had not sought the said footage for leading evidence before framing the charge. The Trial Court relied on the ratio laid down in the case of **State of Orissa vs. Debendra Nath Padhi** reported in (2003) 2 SCC 711, wherein, the Apex Court held that

“defence material cannot be advanced at the stage of framing of charge, since the defence of the accused is irrelevant at this stage and reliance can be placed on record of the case as submitted by police along with the charge-sheet. There would be no right of accused to seek production of a document under Section 91 of the Code of Criminal Procedure at the stage of framing of charge.”

9. In the present case the petitioner was seeking production of CCTV footage for proving his defence. The petitioner is not claiming his discharge from the case on the basis of CCTV footage. He intent to establish his defence with the help of CCTV footage at proper stage. Therefore the ratio laid down in the aforesaid case is not applicable to the facts of the present case.

10. Learned counsel for the petitioner relied on the ratio laid down in the case of **Kamal Ahmed** (supra). I must mention here that the petitioner had challenged the order of the trial Court passed in Misc. Criminal Application No. 2089 of 2018 wherein, this court had directed the trial Court to consider the guidelines given in the case

Kamal Ahmed (supra) and decide the application. It appears that the trial Court has not considered the guidelines given in aforesaid case law. The ratio laid down in the case of **Kamal Ahmed** (supra) is that

“57. It is now clear that the prosecution has no objection for the appellants getting the CDRs produced from the Mobile Service Provider Companies. It appears that even if the relevant data is deleted, it can be retrieved with the help of Information Technology Department of the concerned Mobile Service Providers. Considering the scientific advances made, it appears quite possible to get the details and particulars of the e-mail by which the CDRs were called for and the CDRs that were sent by the Mobile Service Providers on the email address of the ATS. If the trial court feels it necessary, it can seek the evidence / assistance of experts to see whether the data said to have been deleted, can be retrieved, and it is possible to find the names of such experts by taking assistance of the officials of Maharashtra Judicial Academy. If, by taking help of the experts in that field, the data can be retrieved, the problem of nonavailability would be solved. Needless to say that the Court should provide all the assistance to them by all possible legal means and methods.”

11. In the present case the investigating officer came with plea that he had written letters to the State Bank of India, I.D.B.I. Bank and other establishments for securing their CCTV footage, but the said Banks and Establishments have communicated to him that the CCTV footage for the period from 19th July, 2018 to 25th July,

2018 are not available with them. It was expected from the investigating officer to record the statements of officers of said banks and other establishments from whom he had claimed CCTV footage. Similarly the investigating officer was expected to obtain hard-disks of CCTV cameras for retrieving the data if possible. But no such steps were taken by the investigating officer.

12. It is the basic case of the petitioner that he was illegally detained by police from 19th July, 2018 till 21st July, 2018 and during that period he was taken to many places in police vehicle for inquiry including premises of State Bank of India, I.D.B.I. Bank and other establishments. Therefore the CCTV footage of said S.B.I. bank, I.D.B.I. bank and surrounding area is crucial for the defence of the petitioner. The petitioner seeking the production of CCTV footage for proving his defence at appropriate stage and not for the purpose of his discharge from the case. Therefore, I am of the opinion that the ratio laid down in case of **Kamal Ahmed** (supra), is very crucial and applicable to the facts of the present case. Therefore, the said ratio was not properly considered by the trial Court, hence the order of the trial Court is required to be quashed and set aside. Hence I pass the following order :

ORDER

- a) Writ Petition is allowed.

b) The Investigating Officer is directed to obtain the hard-disk of CCTV Cameras from State Bank of India, I.D.B.I. Bank and other establishments as mentioned in para 6 of the reply affidavit of Mrs. Geeta Motichand Bagwade, Police Inspector, Osmanpura Police Station, Aurangabad (City) and produce it in the concerned Court if made available within two months.

c) If the hard-disk of CCTV Cameras are seized by the Investigating Officer, then it may be kept in sealed condition and the petitioner is at liberty to make use of it at the time of leading his defence evidence.

d) Criminal Application No. 1958 of 2021 is also disposed of.

13. Rule is made absolute.

**(SURENDRA P.TAVADE)
JUDGE**