

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

CRIMINAL WRIT PETITION NO. 3110 OF 2022

Khalid Guddu Mukhtar Ahmed Shaikh	...Petitioner
Versus	
The State Of Maharashtra	...Respondent

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Mr. Pandit Kasar, Advocate for the Petitioner.

Mr. S. R. Agarkar, APP for the Respondent – State.

PSI Hanumant N. Waghmare, Bhiwandi Crime Unit-2, present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 13th SEPTEMBER, 2022

PC :

1. The petitioner is facing prosecution vide SCC No. 1223 of 2020 for offences punishable under Sections 364-A, 384, 385, 386, 387 read with 34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act.

2. The proceedings are presently pending before learned JMFC, Joint Court, Bhiwandi. The petitioner preferred an application before the Court of learned JMFC vide exhibit-47 and exhibit-59. Whereas the prosecution preferred application vide exhibit-55 for committing case to the Court of Sessions. The Applications were preferred by petitioner

seeking copies of statements recorded under Section 164 of Cr.P.C. and the CCTV footage collected during the course of investigation. The applications preferred by petitioner were disposed of vide order dated 06.08.2022 and the case was adjourned for committal.

3. Learned advocate for petitioner submitted that in accordance with Section 207 of Cr.P.C. the petitioner is entitled for copy of the statements recorded under Section 164 of Cr.P.C. and DVR. Bail application preferred by petitioner and the co-accused was opposed by prosecution by filing affidavit in reply wherein reference is made to statements of Irfan Hadis Ansari, Abul Faiz Sharfuddin Khan, Shwan Jubber Shaikh, Shehrunisa Mohd. Altaf Momin recorded under Section 164 of Cr.P.C.

4. Learned APP submitted that the learned Magistrate has disposed of the application preferred by the petitioner on the ground that the statements are not available on record. The say filed by the Investigating Officer before the trial Court mentioned that the DVR has been forwarded for forensic examination. In these circumstances, the prayer for furnishing statement and the DVR could not be granted. It

is also submitted that the panchnama recorded during the course of investigation refers to collection of DVR and not CCTV footage.

5. Perused the impugned order dated 06.08.2022 passed by learned JMFC, Joint Court, Bhiwandi. In paragraph 5 of the said order it is observed that there is no video recording (CCTV footage) on record and at this stage the Court is unable to provide CCTV footage to accused No.1 to 4. Say filed by Investigating Officer mentions that hard disk of the DVR is handed over to laboratory and report is not yet received. Hence, Investigating Officer is unable to provide hard disk. Investigating Officer stated that, on receipt of Forensic report, the hard disk and report would be submitted to Court. It was further recorded that accused Nos.1 and 4 are behind bar since several months. It would be just and proper that committed to Court of Sessions. In paragraph No. 7, it is observed that the accused are seeking copy of statements recorded under Section 164 of Cr.P.C. The say of the Nazar was called. However, the concerned clerk has informed that Nazar is on leave and no say filed by Nazar or in-charge Nazar. The statement recorded under Section 164 of Cr.P.C. and CCTV footage are

not available on record. The accused are entitled for receiving copy of charge-sheet on which the prosecution is relying. The Court cannot supply to the accused the material which they are seeking.

6. Learned Magistrate therefore, disposed of application at Exhibit-47, Exhibit-59 and Exhibit-55. Case was adjourned for committal.

7. From the tenor of the aforesaid order, is it apparent that hard disk recovered during the course of investigation has been forwarded to forensic laboratory and the report is not yet received. Investigating Officer filed say stating that the hard disk will be provided to the Court alongwith report received from the forensic laboratory. From the affidavit in reply filed by prosecution opposing bail application NO. 871 of 2021 preferred by petitioner and co-accused, it is specifically mentioned that the statement of the person referred herein above were recorded under section 164 of Cr.P.C. The statements recorded under Section 164 of Cr.P.C. can be provided to all the accused. As far as hard disk is concerned as and when forensic laboratory report is received, the Investigating Officer shall produce hard disk

and report before the concerned Court and thereafter, the request for providing hard disk and the report may be granted by the concerned Court. The Court of learned JMFC may proceed with committal of case to the Court of Sessions.

8. Writ Petitioner is disposed off.

(PRAKASH D. NAIK, J.)