

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 486/2022

Mohd. Danish Zahid Husain,
 aged about 23 years,
 Occ. Nil, R/o. Bazar Fail, Shegaon,
 Tah. Shegaon, Dist. Buldhana.

... **PETITIONER**
 (In Jail)

VERSUS

1. State of Maharashtra,
 through Police Station Officer,
 Police Station Shegaon City, Tah.
 Shegaon, Dist. Buldhana.

2. Mohammad Rafique Mohammad
 Anwar, aged about 63 years,
 Occ. Business, R/o. Athawadi
 Bazar, near Shetki Sanstha, Tah.
 Shegaon, Dist. Buldhana.
**(Amended as per Court's order
 dated 11.08.2022).**

... **RESPONDENTS**

Mr. A. Gawai, Advocate for petitioner.
 Mr. S.M. Ukey, APP for respondent No.1/State.
 Mr. Alok Daga. Advocate for respondent No.2/Intervener.

CORAM : **VINAY JOSHI, J.**
DATE OF JUDGMENT : **22.09.2022.**

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of respective parties.

3. The petitioner who is accused in Sessions Trial No. 39/2018 has challenged order dated 29.06.2022, by which the Trial Court has permitted the prosecution to run a DVR (Digital Video Recorder) containing CCTV footage of the incident. The petitioner has objected on the ground that in absence of valid certificate in terms of Section 65-B(4) of the Indian Evidence Act, the electronic evidence cannot be admitted. The petitioner took me through the evidence of PW-8 from whose possession, CCTV footage was seized. It is contended that the CCTV footage was collected in pen drive which is secondary evidence. However, the application moved by the prosecution discloses that the prosecution has sought permission not to play pen drive but DVR that is original hard-disk where CCTV footage was captured. The concerned CCTV footage was recorded and stored in hard-disk a primary document which the prosecution intended to display.

4. The other side would submit that since the prosecution intends to run DVR i.e. primary evidence, the certification under Section 65-B(4) is not required. To substantiate said contention,

reliance is placed on the decisions of the Supreme Court in cases of *Anvar P V Vs. P. K. Basheer and others, (2014) 10 SCC 473* and *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorwantyal and others, (2020) 7 SCC 1*. In the later decision, it has been clarified that requirement of certificate under Section 65-B(4) is unnecessary, if the original document itself is produced. Here DVR i.e. hard-disk is sought to be produced and therefore, certification is not required. In view of that, the impugned order calls no interference. Hence, petition stands dismissed. No costs.

(VINAY JOSHI, J.)

Gohane

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