

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

CRIMINAL WRIT PETITION NO.1039 OF 2023

SANTOSH ANJIRAM JADHAV
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Petitioner :Ms. Y. A. Namde (appointed)
APP for Respondents: Mrs. G. L. Deshpande

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CORAM : R.M. JOSHI, J

DATE : AUGUST 23, 2023

PER COURT :

1. This Petition is received from Jail from an accused who is facing trial for the offence punishable under Section 302 of IPC in Sessions Case No. 1/2021 pending before learned Additional Sessions Judge-5, Parbhani.

2. The Petitioner is taking exception to the order dated 20.03.2023 passed by the said Court allowing application filed by the prosecution under Section 311 of Cr.P.C for examining Managers of Care Health Insurance Limited and Manipal Signa Health Insurance Co. Ltd, to prove Insurance Policy forms part of charge-sheet.

3. Ms. Y. A. Namde, learned appointed Counsel for

Petitioner, vehemently challenged tenability of impugned order. According to her, Petitioner is facing serious charge of murder and that the prosecution cannot be permitted to examine the witnesses, whose statements have not been recorded under Section 161 of Cr.P.C during the course of investigation. She further submitted that the document which is sought to be proved by the prosecution is electronic document and for want of certificate under Section 65(B), such document cannot be permitted to be proved by examination of witnesses, whose statement is not part of charge-sheet. She placed reliance on the judgment of Hon'ble Apex Court in case of Rajaram Prasad Yadav v. State of Bihar and Anr, 2013 CRI.L.J. 3777, to submit that prosecution cannot be permitted to take aid of Section 311 Cr.P.C for filling up lacunas in the case. She also placed reliance on the judgment of Hon'ble Apex Court in case of Anvar P. V. Vs. P. K. Basheer and Others, (2014) 10 SCC 473, to support her submissions that for want of certificate under Section 65(B) electronic document cannot be proved.

4. Learned APP supported the impugned order by

referring to relevant facts and law.

5. Perusal of the record indicates that the Petitioner is charged for the offences punishable under Section 302 of IPC and it is specifically alleged against him that in order to get amount of insurance policy, victim has been murdered. These facts clearly indicate that the proof of the insurance policy is absolutely relevant for just decision of the case. There is further no dispute about the fact that the insurance policy (document) is collected during the course of investigation and it is part of the charge-sheet. Merely because investigating officer fails to record statements of the Managers, who issued the said policy, it cannot preclude the prosecution from examining them as witnesses to prove the said document before the Court. Since the insurance policy is already on record, it cannot be said that there is any attempt on the part of the prosecution to fill up lacuna. Objection raised by learned Counsel for the Petitioner about there being no certificate under Section 65(B) of the Evidence Act on record is premature. The stage of the proof of document has not come in order to consider

the said objection. It would be open for trial Court to decide this point at the time of recording of evidence, if objection is raised to that effect. In any case, the Hon'ble Apex Court in case of Arjun Khotkar Vs. Kailash Gorantyal, (2020) 7 SCC 1 has held that certificate under Section 65(B) can be allowed to be produced at a subsequent stage if has not been produced along with electronic record and at the time of filing of charge-sheet and it is a curable defect. Moreover, it is always open for the defence to cross-examine these witnesses. Thus, no prejudice much less any irreparable loss would be caused to the accused by allowing prosecution to prove insurance policy as per law.

6. Having regard to the facts and circumstances of the case and considering the relevancy of the document in connection with offence charged against accused, there is no reason for this Court to cause interference in the impugned order dated 10.03.2023 passed by learned Additional Sessions Judge exercising powers under Section 311 of Cr.P.C permitting the prosecution to examine the Managers of Care Health

Insurance Limited and Manipal Signa Health Insurance Co. Ltd. Thus, this Court finds no merit in the Petition. Hence, Petition stands dismissed.

7. Fees of Ms. Y. A. Namde, learned Counsel appointed to represent Petitioner, is quantified @ Rs. 15,000/- (Rupees Fifteen Thousand Only) to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(R.M. JOSHI, J.)

Malani