



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

CRIMINAL WRIT PETITION NO. 651 OF 2025

Chhagan s/o Bhima Gharbude
Age : 59 years, Occu. : Agri.
R/o. : Pandharwadi, Tq. Georai,
Dist. Beed.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Police Inspector
Talwada, Tq. Georai, Dist. Beed.

2. Kalyan Vasudeo Bhavale
Age : 29 years, Occu. : Agri.
R/o. : Pandharwadi, Tq. Georai,
Dist. Beed.

.. Respondents

Mr. Rajendra G. Hange, Advocate for the Petitioner.
Smt. Chaitali Choudhari - Kutti, APP for Respondent No. 1.
Mr. Akshay D. Kulkarni, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 08th July, 2025.

Date on which order pronounced : 29th July, 2025.

FINAL ORDER :-

. The present petition is by the informant on whose report the Police registered Crime No. 287/2024 at Police Station Talwada, District Beed for the offences punishable under Sections 103,

61(2), 189(2), 191(2), 191(3), 190, 126(2) and 127(2) of the Bhartiya Nyaya Sanhita (for short “B.N.S.”). Respondent No. 1 is the State. Respondent No. 2 is original accused in the case who has filed a Criminal Bail Application No. 74/2025 pending in the Court of learned Additional Sessions Judge, Beed.

2. By way of this petition the petitioner has challenged an order passed below Exh. 20 in Criminal Bail Application No. 74/2025. The learned Additional Sessions Judge, Beed by way of impugned order dated 03.05.2025 allowed the said application and directed the Investigating Officer to produce entire record pertaining to Crime No. 287/2024 registered with Talwada Police Station including copy of General diary, station diary, case diary, inward-outward register for the period 04.09.2024 till 07.03.2025. The said record is called in sealed envelope only for the purpose of perusal by the Court. It is specifically ordered that the accused and his advocate shall not inspect the same.

3. It is the argument of learned advocate Mr. Hange for the petitioner that, there is no such provision for filing such application by the accused person. He submits that, the present

order is totally without jurisdiction and said amounts to improper exercise of the power. He relies upon the following judgments :

(i) **Balakram Vs. State of Uttarakhand and Ors.**
reported in **AIR 2017 SC 2375.**

(ii) **P. Chidambaram Vs. Directorate of Enforcement** reported in **AIR 2019 SC 4198.**

(iii) **Prabir Purkayastha Vs. State (NCT of Delhi)**
reported in **AIR 2024 SC 2967.**

4. The learned advocate Mr. Kulkarni for respondent No. 2/accused vehemently opposes the petition. He submits that, the application was filed for producing the record only for the purpose of the Court. There is no prayer to allow the accused to inspect the said record. Section 192 (5) Bhartiya Nagarik Suraksha Sanhita (for short “B.N.S.S.”) permits the Court to call for such record and to go through the same. The restriction is only that the accused has no access to such record. He thus submits that the learned Sessions Court has perfectly exercised the powers vested with it. No interference is required in the said order.

5. Section 192 of the B.N.S.S. reads as under :

“192. Diary of proceedings in investigation.—(1) Every

police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) The statements of witnesses recorded during the course of investigation under section 180 shall be inserted in the case diary.

(3) The diary referred to in sub-section (1) shall be a volume and duly paginated.

(4) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(5) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 148 or section 164, as the case may be, of the Bharatiya Sakshya Adhiniyam, 2023, shall apply.”

6. The learned advocate for respondent No. 2 further submits that, by making this application the accused is not gaining anything as he is in jail. The papers are necessary for deciding the application filed seeking that the arrest is illegal. The record would facilitate the Court to take proper decision on the

application seeking such declaration. The petition is objected stating that, the application was filed by the prosecution in the Trial Court whereas, the petition is filed by the informant directly.

7. Thus looking to sub section (5), it specifically bars the accused from calling for such diaries, nor they are permitted to see the record merely because the record is referred to by the Court. Only exception is when the Police Officer uses the same to refresh his memory, or when the Court uses such record for the purpose of contradicting such police officer, in that case the provisions of section 148 or section 164 of the Bharatiya Sakshya Adhiniyam, shall apply.

8. In the application, the accused has stated that, investigating agency after inordinate delay filed say to application for bail. His arrest dated 24.02.2025 itself is illegal. No notice was given to the accused. No information of the grounds of arrest is also given. The letters mentioned do not bear any outward number. In the arrest, there is no mention of issuance of any letters. At last, a request is made to call for all the record.

9. In the present case, the application was filed by the accused in the bail application. The accused filed application for bail. He thereafter file an application for declaring his arrest in the case as illegal. It is thereafter the application is filed calling for the record from the Police Station. The said application was specifically opposed by the petitioner by filing say to the application. It is stated that, it was the duty of the accused and his advocate to peruse the relevant documents filed in the charge-sheet by the Investigating Officer. Having failed to do so, now the accused cannot ask for the documents which are not part and parcel of the charge-sheet.

10. This Court finds that, the application was filed without mentioning as to exact for what purpose the documents are required. From the order of learned Sessions Court also it is not clear as to what made the learned Sessions Court to allow the application of the accused. That too after filing of the charge-sheet.

11. In the case of P. Chidambaram (*supra*), the Hon'ble Supreme Court held that sub section (2) of Section 172 of the Code of

Criminal Procedure (now to Section 192 of the B.N.S.S.) permits any Court to send for case diary to use them in the trial. Section 172 (3) specifically provides that, neither the accused, nor his agents are entitled to call for case diary, nor they are entitled to see them merely because they are referred to by the Court. In the said case, the Court also considered the case of **Sidharth and Ors. Vs. State of Bihar** reported in **(2005) 12 SCC 545**.

12. By relying upon the case of **Balakram** (*supra*), the Court observed that, confidentiality is always to be maintained in the matter of investigation and it is not desirable to make the police diary available to the accused on his demand. In the said case, the Hon'ble Apex Court observed that, the police diary is only a record of day to day investigation by the investigation. The accused or his agents are not entitled to call for such diary and see them during the course of inquiry or trial. The unfettered right is only given to the Court to examine the entries of the police diary. Such right is not available to the accused. It is further held in the said case that, denial of right to the accused to inspect the case diary cannot be said to be unreasonable or arbitrary.

13. In the case of Prabir Purkayastha (*supra*), though other judgments are also relied upon, this Court finds that, the basic principle to be kept in mind is as to whether the Court has power to call such record from the Police Station. The answer is yes.

14. The next question as to whether in the present case the Court is justified in calling the record on an application filed by the accused person. This Court finds that, in the application below Exh. 20-D there are no specific reasons given for calling the record from Police Station. It is only stated that, it would be to facilitate the Court while deciding the bail application and mainly the application seeking declaration that arrest of the accused as illegal. There is no quarrel about the propositions in the cases of Balakram (*supra*), P. Chidambaram (*supra*) and Prabir Purkayastha (*supra*).

15. Objection by the respondent is raised that the application in the Trial Court was opposed by the State and this petition filed by the informant is not maintainable. It is argued by the petitioner that the prosecution is conducted by prosecution engaged by the informant. The application was thus opposed on his behalf. This

Court need not go into that as this is a writ petition filed under Article 227 of the Constitution and not any proceeding provided by any statute. This Court, therefore, in a fit case can exercise its power.

16. In the present case, looking to the application and looking to the order impugned in the petition this Court does not find that, in the present case such application is justifiable and the order is rightly passed. The learned Sessions Judge while allowing the application has not given sufficient reason as to what made the Court to think that the application need to be allowed. It is merely observed that, no prejudice or harm would be caused to the prosecution if the record is called. This reason can hardly be said to be sufficient enough to allow the application of the accused. Thus, in the present case, this Court finds that the exercise was improper. The impugned order, therefore, deserves to be quashed and set aside.

17. In view of the above, criminal writ petition is allowed in terms of prayer clause (B).

18. Criminal writ petition stands disposed of.

(KISHORE C. SANT, J.)

PS.B.