



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 827 OF 2025

Vishwanath Digambar Kanbale
Age. 48 years, Occu. Business,
R/o. Near Datta Temple, Purna,
Tq. Purna, Dist. Parbhani.

...Petitioner

Versus

1. Shaikh Jamir S/o. Shaikh Salar,
age. 31 years, Occu. Business,
2. Shaikh Salar S/o. Shaikh Mohiyoddin,
age. 59 years, Occu. Business,
3. Shaikh Masud S/o. Shaikh Mohiyoddin,
age. 48 years, Occu. Business,
4. Shaikh Amir @ Ammu S/o. Shaikh Salar,
age. 29 years, Occu. Business,
5. Irshad Khan S/o. Hamid Khan Pathan,
age. 35 years, Occu. Business,

All above R/o. Mastanpura, Purna,
Tq. Purna, Dist. Parbhani.

6. The State of Maharashtra,
Through the Police Station Officer,
Police Station, Purna,
Tq. Purna, Dist. Parbhani.

...Respondents

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Advocate for Petitioner : Mr. Mahesh P. Kale
Advocate for Respondent Nos. 1 to 5 : Mr. Shaikh Wajeed Ahmed
APP for Respondent No. 6 : Mr. P.M. Kulkarni

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CORAM : ABHAY J. MANTRI, J.
DATE : 17th NOVEMBER, 2025

ORAL JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and heard finally by the consent of the learned Advocates for the respective parties.
2. By this petition, original informant being aggrieved by the judgment and order dated 11.03.2025, passed by learned Additional Sessions Judge – 1, Parbhani, whereby, confirmed the order dated 03.12.2019, passed by learned Judicial Magistrate First Class, Purna, District Parbhani, below Exhibit 36 in RCC No. 80/2017, whereby, rejected the application filed by the APP for permitting it to produce the documents of the hospital on record.
3. Learned Advocate for the petitioner vehemently contended that learned Magistrate as well as learned Additional Sessions Judge have ignored the averment in the FIR and the charge sheet wherein it is mentioned that the petitioner had taken treatment in Government Hospital, Nanded, and thereby erred in rejecting the application for production of medical papers of Government Hospital, Nanded. Therefore, he has urged that the petition be allowed.
4. Learned APP supported the contention of the learned Advocate for the petitioner.
5. On the other hand, learned Advocate for the respondents vehemently opposed the petition, contending that initially, the petitioner

had filed an application under Section 397 of the Code of Criminal Procedure (for short the '*Cr.PC.*'), which was rejected. He has not challenged the same; therefore, the petitioner is not entitled to produce the document on record, which is not part of the charge sheet. *Secondly*, he argued that both Courts have passed concurrent orders and, therefore, this Court may not entertain the original application in writ jurisdiction. *Thirdly*, he argued that the applicant's application is vague. He did not disclose how he came into possession of the said documents, and after one year from the filing of the charge sheet, he filed an application seeking permission to produce them; therefore, the petitioner is not entitled to that. *Lastly*, he submitted that, to harass the respondents, he has filed this petition and thus urged that the orders passed by both Courts below are just and proper and require no interference.

6. On perusal of the FIR lodged by the petitioner, at the outset, it appears that in the FIR, the petitioner has categorically stated that “after sustaining injury, he, along with his injured brother, went to the police station. *The police referred them to the Government Hospital, Purna, and from there they were referred to the Government Hospital, Nanded, where they received treatment.* Similarly, I have gone through the documents and case papers of the Government Hospital, Nanded,

wherein it appears that on 05.02.2017, he was admitted to the said hospital following the incident of 04.02.2017, and, accordingly, the case papers were prepared. Those papers reflect the sustaining of injury and the treatment given to them. The said case papers indicate that due to the assault, they have sustained the injuries and, therefore, treatment was given to them. Thus, in my considered view, those documents are material documents and though, possession of those documents with the informant that does not mean that how he has got the custody of the same as the said documents pertains to the treatment given to him, in fact, it was the duty of the Investigation Officer to collect those documents and file along with the charge sheet but he fails to collect the same from the concerned hospital. Therefore, it cannot be said that the petitioner failed to explain how he obtained custody of those documents after one year.

7. Apart from this, as per the dictum laid down in *Sameer Sandhir Versus Central Bureau of Investigation, 2025 Live Law (SC) 627*, in my view, the prosecution can produce the documents on record which were omitted to produce along with the charge sheet. If the petitioner is permitted to produce the said documents on record, it would not cause prejudice to the rights of the accused persons, but they would get an opportunity to challenge the same during the trial. On the contrary, if

the petitioner is not permitted to produce the same on record, then certainly his right would be affected and, therefore, in my view, it would be appropriate to permit the petitioner to produce the documents on record.

8. Perused the order passed by the learned Magistrate. It appears that the learned Magistrate erred in failing to consider the FIR and other documents on record while passing the order. Moreover, the order seems to be cryptic, and the reasons recorded by the learned Magistrate appear to be contrary to the material on record and settled position of law, and, therefore, the order cannot be sustained in the eyes of law.

9. Similarly, a learned Additional Sessions Judge has observed that the Court can direct the concerned hospital to call the record for the production of the said documents. No doubt the Court can call the documents from the concerned hospital. However, for that reason, it would not be proper to restrain the petitioner from producing the same on record. Moreover, the production of documents does not mean they can be read into evidence; the prosecution has to adduce independent evidence to prove them. Therefore, it was incumbent on the prosecution to prove the said documents by adducing cogent and reliable evidence. But non permitting them to produce the said documents would certainly

cause prejudice to their rights and, therefore, passing the orders by the learned Additional Sessions Judge appears to be improper. Thus, the impugned orders cannot be sustained in the eyes of the law.

10. Considering the above discussion and the law laid down in the case of *Sameer Sandhir* (supra), in my view, the petitioner is entitled to produce the said documents on record.

11. As a result, the Criminal Writ Petition is allowed. Impugned order dated 11.03.2025, passed by learned Additional Sessions Judge – 1, Parbhani, whereby, confirmed the order dated 03.12.2019, passed by learned Judicial Magistrate First Class, Purna, District Parbhani, below Exhibit 36 in RCC No. 80/2017, is hereby quashed and set aside. The application, Exhibit 36 in RCC No. 80/2017, filed by the petitioner, is allowed. Inform the Trial Court accordingly. Rule is made absolute. No order as to costs.

12. Needless to clarify that production of the documents does not mean that the same is admissible in evidence. The prosecution has to prove it independently.

(ABHAY J. MANTRI, J.)