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48-WP-886-2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

48 CRIMINAL WRIT PETITION NO. 886 OF 2025

Dnyaneshwar Ramdas Chaudhari

VERSUS

The State Of Maharashtra

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Mr. Nilesh S. Ghanekar, Advocate for the Petitioner.

Smt. Chaitali Chaudhari-Kutti, APP for Respondent-State.

CORAM : KISHORE C. SANT, J.

DATE : 8th AUGUST 2025.

PC :-

1. Heard the parties.
2. The present petitioner is an accused No.1 facing a trial for offence under Sections 302, 341, 324, 504, 506 read with 34 of the Indian Penal Code, 1860 in Sessions Case No. 285 of 2021 pending before the learned Sessions Judge, Chh. Sambhajnagar. The accused filed an application for sending a mobile phone, that was seized from him by the police during the course of investigation, to the Forensic Scientific Laboratory (for short FSL) at Kalina, Mumbai, for extracting a video recorded by

Ethape

him in his mobile phone for examination as regards question Nos. 1 and 2 asked by the investigating officer vide order dated 8th October 2021.

3. It is on record that the mobile phone was seized from the accused. The police drawn panchanama. They sent the said mobile to the FSL at Aurangabad. The questions sent to the lab by the learned SDPO, Division Sillod, (i) as to whether the video shooting is of the timing of 16:30 to 18:00 on 17th July 2021 i.e. the time of incident (ii) whether any editing is appearing in the said video recording, (iii) whether any files are deleted during that period and if there is any video deleted, the said to be recovered (iv) to give three copies of the said video recording. It was answered by the Scientific Officer F.S.L., Chh. Sambhajinagar by letter dated 30th April 2024 stating that “mobile phone marked as “Ex-1” could not be extracted using tools present in Cyber forensic division of this laboratory”.

4. It is in this view of the matter, the accused filed an application as it is the defence of the accused that it is the deceased who was aggressor. In the said recording, it seen that the deceased came on motorcycle with

a stick and it is the deceased who started assaulting the accused. It is the case of the accused that this is going to be a vital piece of evidence and crucial to the decision of the case. Learned Sessions Judge, by his order, passed at Exh.135 in Sessions Case No.285 of 2021, rejected the application by the impugned order.

5. The learned Advocate for the petitioner vehemently argued that it is necessary to allow the application to give a fair trial to the accused. In the present case, the prosecution has to try to bring on record as much as the evidence as possible. It is also necessary for the learned Sessions Judge to allow the application so as to bring on record whatever material is possible. By rejecting the application, the accused is deprived of his right to a have fair trial. There are facilities available at FSL, Kalina where a proper examination can be done. The letter issued by the FSL, Chhatrapati Sambhajinagar, does not say that the video cannot be extracted at all. What is stated is only that it could be extracted at their lab. If the mobile phone is sent to some higher lab with better equipment and facilities, the video can be extracted. It is the prosecution who on its

own was trying to gather the information about the video shooting. However, now the prosecution is opposing the said request. In the interest of justice, the petition needs to be allowed.

6. Learned APP opposed the petition. She submits that the prosecution has already tried its level best to get the evidence on record. The prosecution has fairly recorded panchnama of seizure of the mobile. It was also sent to the FSL. Once the FSL has given report that the recording could not be extracted, there is no question of sending it to any other lab. Doing so would be a futile exercise and it would only prolong the trial. No purpose would be served by allowing the application.

7. This Court has seen the order passed by the learned Sessions Court. It is only stated that since the report is received from the FSL, it is not necessary to send the same mobile for another laboratory for examination. The court did not find sufficient ground mentioned in the application. It did not find any substance in the contention of the accused that the report of FSL, Aurangabad was already prepared and

rejected the application.

8. In the present case, at the most, the other laboratory were also not be able to extract the video recording. However, by that itself cannot be said to be sufficient to reject such an application. The accused is not praying any other relief but is praying evidence which is already on record be sent to better lab. It is also a matter of record that it was sent for examination. No prejudice would be caused by sending the same mobile to the better laboratory and to try to get as much as evidence as possible. On hypothesis, the accused cannot be refused a fair trial. Refusing to send the mobile for further examination certainly would be denying fair opportunity to the accused to bring on record the best possible evidence. This court finds that to try to get as much as evidence is the prime duty of the prosecution. The prosecution must attempt to bring on record whatever material can be brought on record. Considering above, this Court finds that the petition ought to have been allowed.

9. In view of the above, this court is inclined to allow the writ

petition. Writ petition stands allowed in terms of prayer clause (B).

10. The impugned order dated 2nd April 2025 passed below Exhibit-135 in Session Case No.285 of 2021 filed by before the learned Sessions Judge-10, Chhatrapati Sambhajinagar is quashed and set aside.
11. Report be called within eight weeks thereafter from the lab.
12. Writ petition stands disposed off.

[KISHORE C. SANT, J.]