



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

CRIMINAL REVISION APPLICATION NO. 160 OF 2024

APPLICANT : State of Maharashtra, through
Police Station Officer, Police
Station Ansing, Tq. Dist. Washim.

VERSUS

NON-APPLICANTS 1. Rajaram Mahadev Hatkar,
Aged 45 years.
2. Ram Mahadev Hatkar,
Aged 30 years.
3. Vijay Mahadev Hatkar,
Aged 35 years.
4. Sarubai @ Sarsabai Mahadev
Hatkar, Aged 75 years,
All R/o Pangerkheda, Tq. Dist.
Washim Accused No.1 Since in
M.C.R. at Present (District Central
Jail, Akola Road, Washim.

Mrs. Swati Kolhe, APP for applicant/State.
Mr. S.D. Chande, counsel for non-applicant No.1

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 10/01/2025

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.
2. By this revision, the State has challenged the order passed by the Principal District Judge and Sessions Judge Washim below Exhibits 52 and 57, rejecting the prayer of the State to produce the 65-B certificate and the production of the letter of Jio Company disclosing ownership of mobile number 7720931218 and certificate under Section 65-B of the Indian Evidence Act issued by the Reliance Jio Company.
3. As per the contention of the State, that Crime No. 122/2023 under Sections 302 and 498-A of the Indian Penal Code (IPC) was registered against the non-applicant, and they were charged for the same. The charge was also framed, and the trial was commenced. The prosecution has examined all 11 witnesses. The evidence came on record to PW-4 Amit shows that the accused Rajaram on the fateful day has made a phone call, which was received by the PW-4-Amit. The extra-judicial confession was also made by the accused that he has committed the murder of his

wife. PW-1, the investigating officer, in his evidence in para-5, has specifically stated that he received the CDR and the mobile number of the accused, which was in the name of the accused No. 1. He has further stated that the CDR and SDR reports were filed on record, but the same were without the 65-B certificate. Therefore, the prosecution filed an application to produce the 65-B certificate. The prosecution has also filed an application to place on record the CDR and SDR reports, which the Sessions Judge has permitted to produce the CDR and SDR reports, but they rejected the prayer to produce the 65-B certificate, and therefore, the present revision application is filed by the applicant/State.

4. Heard learned APP for the applicant/State. She submitted that CDR and SDR reports were part of the charge-sheet. The production of the copies of the CDR and SDR is permitted by the Court. However, the Court has rejected the prayer of the prosecution to place on record the production of the letter of Jio Company disclosing ownership of mobile number 7720931218 and the certificate under Section 65-B of the Indian Evidence Act. She submitted that, production of the 65-B

certificate at the subsequent stage is permissible as the Hon'ble Apex Court in the case of *State Of Karnataka Versus T. Naseer @ Nasir @ Thandiantavida Naseer @ Umarhazi @ Hazi & Ors in criminal appeal no. 3456 of 2023 (special leave petition (crl.) No. 6548 of 2022) reported in 2023 LiveLaw (SC) 965*, wherein this aspect is dealt by the Hon'ble Apex Court by referring the earlier judgments i.e. in the case of *Anvar PV vs P.K.Basheer & Ors [(2014) 10 SCC 473]* and *Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal [(2020) 7 S.C.R. 180]*, she submitted that being it is a curable defect, the Sessions Judge ought to have permit the State to place on record the said 65-B certificate.

5. Learned counsel for the non-applicants/accused strongly opposed the same on the ground that the CDR and SDR reports are filed at a belated stage, only to fill up the lacuna of the prosecution case. In view of that, the application is rightly rejected by the Sessions Court, and no interference is called for.

6. After hearing both sides and on perusal of the record, it reveals that Exhibit Nos. 52 and 57, both the applications, are filed by the State. By way of Exhibit No. 52, the prosecution filed an application stating that the CA report, CDR, and SDR reports

are received by them, and they be permitted to file it on record. The said production was allowed by the Sessions Judge. Thereafter, Exhibit No. 57 was filed by the prosecution, contending that inadvertently, they have not filed the Section 65-B certificate and the letter showing the ownership of the said mobile phone of accused No. 1. The said application, Exhibit No. 57, is rejected by the Sessions Court, observing that it is at a belated stage, and it can not be permitted subsequently and only permitted to file CDR and SDR reports on record. As per the prosecution case, there was a communication between the accused and one of the witnesses, and therefore, they placed reliance of the CDR report. Before closing the case, the CDR and SDR reports are received by the Investigating Agency, and therefore, the same were filed on record. It reveals from the documents that it was not accompanied with the 65-B certificate.

7. Learned APP further submitted that though the 65-B certificate was filed along with the documents, it was not mentioned in the list of the documents and therefore, it was not permitted to file it on record. She submitted that by referring the judgments of the *Anvar PV* referred (supra) as well as in the case

of *Arjun Panditrao Khotkar* referred (supra), and the case of the *State By Karnataka vs Jamal Hirebaksh [2019 (7) SCC 515]* wherein the Hon'ble Apex court has held that the non-production of certificate under Section 65-B of the Act is curable defect. The relevant paragraph 16 of *Arjun Panditrao Khotkar's* case is extracted below;

*“16. The same view has been reiterated by a two-Judge Bench of this Court in **Union of India v. Ravindra V. Desai [(2018) 16 SCC 273]**. The Court emphasised that non-production of a certificate under Section 65-B on an earlier occasion is a curable defect. The Court relied upon the earlier decision in **Sonu v. State of Haryana [(2017) 8 SCC 570]**, in which it was held:*

“32. ... The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the court could have given the prosecution an opportunity to rectify the deficiency.”

8. Coming to the issue as to the stage of the production of certificate under Section 65-B of the Act is concerned, this Court in *Arjun Panditrao Khotkar* referred (supra) held that the certificate under Section 65-B of the Act can be produced at any

stage, if the trial is not over. The relevant paragraphs are extracted below.

“54 Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 of the CrPC or Section 165 of the Evidence Act. Depending on the facts of each case, and the Court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the Court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case that discretion to be exercised by the Court in accordance with law.”

9. In view of the observation of this Hon’ble Court, the Sessions Court has already allowed the State to file on record the CDR and SDR reports. The said order of allowing the prosecution to place on record the CDR and SDR reports is not challenged by

the accused. The accused has also not shown what prejudice will be caused to the accused if the CDR and SDR reports are permitted to be produced on record. At this stage, nothing is before the Court to show that the said order was challenged by the accused. In view of that, the prayer of the prosecution as to the production of the certificate, which is a curable defect, can be permitted at a subsequent stage. As far as the prayer of the prosecution regarding the production of the letter of the Jio Company, which is not part of a charge-sheet. The learned trial Court has rightly rejected the said prayer, and therefore, as far as the production of the letter is concerned and rejection about the same, no interference is called for.

10. In view of that, revision deserves to be allowed partly. Accordingly, I proceed to pass the following order.

- a] The revision application is partly allowed.
- b] The order passed by the Sessions Judge, Washim, rejecting the production of the certificate under Section 65-B of the Indian Evidence Act below Exhibit No. 57 is hereby quashed and set aside.

- c] The learned Sessions Judge shall permit the prosecution to place on record the 65-B certificate, and sufficient opportunity is to be granted to the accused to cross-examine the witness.
- d] The prayer of the prosecution to place on record the letter, which is filed below Exhibit No. 52 of Jio Company, disclosing ownership of Mobile No. 7720931218, is hereby rejected.

11. Rule is made absolute in the above terms. No order as to costs.

[URMILA JOSHI-PHALKE, J.]