



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

CRIMINAL WRIT PETITION NO. 155 OF 2026

1. Yunus Karim Bagwan
2. Mo. Rafiq Abdul Karim Bagwan
3. Bilal Yunus Bagwan
4. Mo. Ali Mo. Rafiq Bagwan
5. Hasan Yunus Bagwan

...Petitioners

Versus

State of Maharashtra

...Respondent

APPEARANCES :

Advocate for Petitioners : Mr. S. J. Salunke

APP for Respondent/State : Mr. Aftab Ahmed Khan

CORAM : MEHROZ K. PATHAN, J.

DATE : 2nd FEBRUARY 2026

ORAL JUDGMENT :

1. The petitioners are challenging the order dated 01.12.2023 passed by the learned Sessions Judge, below Exh. 71 and the order dated 05.01.2026 passed below Exh. 125 in Sessions Case No. 95 of 2020.

2. The learned counsel for the petitioners submits that

the petitioners have filed the application below Exh.125 with a prayer not to refer to the documents filed by the prosecution on 15.3.2023 in the evidence of the witnesses during the trial. The said application was contested by the prosecution and after detail hearing, the learned trial court has rejected the application on the ground that the documents were allowed to be produced on record vide order dated 1.12.2023 on an application filed by the prosecution on 15.9.2023. The application with a prayer not to refer to the documents filed by the prosecution is an attempt to recall the order dated 1.12.2023 passed by the learned Sessions Judge and would amount to recalling or reviewing the order, which is specifically prohibited under Section 362 of Cr.P.C.

3. The learned counsel for the petitioners submits that the prosecution has filed an application for production of documents after filing of charge sheet. The said documents were not part of the charge sheet and as such, could not have been allowed by the Sessions Court in view of the judgment of the Bombay High Court in the matter of **Bharat alias Bhomaram Choudhary vs. State of Maharashtra (2024)DGLS Bom. 4815** and **Wazid Ansari vs. State of Maharashtra reported in (2024)All M.R. Cri. 3512.**

4. The learned counsel for the petitioners submits that perusal of the provisions of Cr.P.C. and the entire scheme contemplated therein demonstrates that there is no provision available for the prosecution to produce documents which were not part of the charge sheet. Any such attempt on behalf of the

prosecution had to be in furtherance of the investigation carried out under Section 173(8) of the Cr.P.C. in which some new evidence is collected by the prosecution. The documents which are sought to be relied upon by the prosecution are medical certificates of the injured witnesses, which were not part of the charge sheet and thus, ought not to have been referred by the prosecution to its witnesses and the same is specifically prohibited in view of the aforesaid two pronouncements of the Bombay High Court in the matters of Bharat Chaudhari and Wazid Ansari, cited supra. The learned counsel, therefore, prays for setting aside the order dated 1.12.2023 passed below Exh.71 and subsequent order dated 5.1.2026 below Exh.125, passed by the learned Sessions Court, in Sessions Trial No. 95 of 2020.

5. I have gone through the order dated 1.12.2023 and the order dated 05.1.2026 and the charge-sheet filed by the prosecution. Perusal of the order dated 1.12.2023 passed by the learned Sessions Judge, below Exh.71 would show that the said order was passed on an application filed by the prosecution. The said application was allowed after calling for the say of the accused. The accused have filed their say on 15.9.2023 on the said application. Thus, after considering the documents sought to be placed on record and the charge sheet filed by the prosecution the trial court, vide order dated 1.12.2023 had allowed the said application below Exh.71 allowing the prosecution to produce documents which are nothing but medical papers of the injured witnesses. Perusal of the application Exh.71 filed by the prosecution shows that witnesses were

admitted in the hospital for further treatment, however, till filing of the charge sheet, the medical papers were not available and hence, the medical papers could not be filed alongwith the charge sheet. Taking into consideration the aforesaid reasons stated in the application, the said application came to be allowed vide earlier order dated 1.12.2023 with a specific observation that evidence is yet to commence.

6. The petitioners have suffered the aforesaid order dated 1.12.2023 and did not challenge the said order before the appropriate forum by taking appropriate steps, however, after the said order came to be passed on 1.12.2023, the trial has proceeded and the witnesses are also examined. The petitioners have thereafter filed the present application Exh.125 for not allowing the prosecution to refer the witnesses the documents which were allowed to be brought on record vide order dated 01.12.2023. Perusal of the second impugned order dated 5.1.2026 passed below Exh.125 filed by the petitioners shows that the offence was committed on 18.6.2020 and the prosecution witness No.1 was already examined, wherein, he has stated in his deposition that he was referred to Navandar Hospital Parbhani and then to Santapur Hospital, Aurangabad. Another injured witness Sachin Aher was treated at Dagdu Hospital, Manwat and then referred to Nanded for further treatment. It is further revealed that the charge sheet came to be filed in the said crime on 11.9.2020, however, at that time, the Investigating Officer did not file the document i.e. medical treatment papers as the same were not available at the time of

filing the charge sheet. The application below Exh.71 was also filed by the prosecution and not by any witness or the victim and as such, the ratio of the judgment relied upon by the accused/petitioners herein in the case of Bharat Chaudhari (supra) would not apply. In the case of Bharat Chaudhari supra, the Single Judge of the Bombay High Court was pleased to observe as under :-

33. This brings me to the irregular role of the Public Prosecutor in the present case. The application dated 19.04.2024 filed by the Public Prosecutor states that the victim had handed over the documents to be produced in the Court as evidence. This statement itself points to the partisan role being played by a Public Prosecutor. As emphasized in the judgments referred to above, the Public Prosecutor acts beyond his role and appointment under Section 24 of the Code, if he attempts to produce documents or evidence on behalf of a witness, and beyond the documents accompanying the charge sheet. He cannot take the role of an Investigator or even inquire into the evidentiary value of such documents and has to play a non-partisan role during the prosecution of a case. The role of the Public Prosecutor is to base the entire trial upon the documents relied upon in the Final Report and to assist the Criminal Court at arriving upon a decision based on this material and none else.

. In the present case, the Public Prosecutor, by application dated 19.04.2024 records that the victim has handed over the documents and that the same are very material and necessary to meet the ends of justice. How the Prosecutor came to this conclusion, whether on his own investigation or otherwise, defies all logic. This can certainly not be the role of a Public Prosecutor as in the present case, by the very averments in the application, he has taken up a partisan role in favour of the witness/victim. The application is, therefore, clearly not maintainable and certainly not in terms of Section 91 or Section 231 of the Code. The application necessarily has to be held to be beyond the powers vested in a Public Prosecutor to move such an application, and is not maintainable. This course of action has been taken by me in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India vested in me, in addition to the inherent powers exercised under Section 482 of the Code, to correct a gross injustice which may be caused to the accused if such an application were allowed or even dealt with.

7. Thus, in the aforesaid reported case of Bharat Chaudhari relied upon by the accused, it can be seen that the documents were handed over by the victim by the prosecution, who had then filed an application for producing the documents on record. Same is not the case in the present petition. Here, the prosecution itself has filed an application before commencement of the evidence by the witnesses way back in the year 2023 and the learned trial court has allowed the said application on 1.12.2023 taking into consideration the reasons stated in the said application and also recording the reasons that evidence is yet to commence. The reliance upon the said judgment in the case of Bharat Chaudhari by the petitioners herein, is misconceived.

8. Another judgment relied upon by the petitioners is in the case of *Wazid Ansari Vs. State reported in (2024) All M.R. Cri. 3512*. It can be seen that the prosecution had filed an application thereby permitting the victim to rely upon certain photographs alongwith certificate under Section 65-B of the Evidence Act on the ground that no prejudice is going to be caused to the accused or the victim. Thus, it can be seen that the facts of the aforesaid case reveals that the prosecution has filed an application for production of aforesaid documents i.e. photographs and certificate under Section 65-B permitting the victim to rely upon the photographs and specific averment was made by the prosecution that the certificates were not available with the victim at the relevant time, but, subsequently the victim

managed to locate the photographs from her i-cloud backup and accordingly, she desired to produce the said photographs while in the witness box. Thus, in the backdrop of the aforesaid facts, the Single Bench of the Bombay High Court at Goa, was pleased to reject the said application for production at the behest of the victim.

9. Insofar as the facts in the present petition are concerned, it can very well be seen that the prosecution itself has moved an application for production of medical certificates on record of the injured witnesses and the victim on record on the ground that the said certificates were not available at the time of filing of charge sheet. The said application came to be allowed way back in the year 2023. The petitioners failed to challenge the order dated 1.12.2023 by taking appropriate steps thereby allowing the trial to proceed. The trial has already commenced and the prosecution has examined the prosecution witness NO.1. It is thereafter that the petitioners have chosen to file an application below Exh.125 with a prayer not to allow the prosecution to refer to the documents, which were already allowed to be brought on record vide earlier order dated 1.12.2023. the petition is nothing but an attempt on behalf of the accused to circumvent the order dated 1.12.2023 which has attained finality and as such, I do not find any substance and merit in the arguments of the petitioners herein.

10. The learned Singe Judge of this court in the matter of **Niwas Keshav Raut vs. State of Maharashtra**, reported in 2019 All

M.R. Cri. 3742 relying upon the Division Bench judgment in the case of **State of Maharashtra Vs. Ajay Dayaram Gopnarayan & Anr.**, reported in *2014 All M.R. Cri. 2141*, has observed as under :

10. Thus, the Division Bench is of the opinion that what Section 294 does is to regulate the procedure of filing of a document before the Court and the treatment that it must receive from the Court.

11. The significant aspect of Section 294 Cr.P.C., one must note, is that it no where places any embargo upon the prosecution or accused to file a document at a stage subsequent to filing of the charge-sheet. It only says that if any document is sought to be produced before the Court, it should be included in the list of the documents and then the other side should be called upon to either admit or deny the genuineness of the document. It means by necessary implication that a document can be filed subsequent to filing of charge-sheet subject to following the procedure prescribed in Section 294. Then, it is not necessary for the accused, who is called upon to admit or deny the document, to choose either of these options and he may simply keep silence in respect of the document which may as well be an expression of his fundamental right under Article 20(3) of the Constitution of India which says that no person accused of any offence shall be compelled to be a witness against himself. In case the accused chooses to deny the document or just remains silent in that regard, the document cannot be admitted in evidence and it would be required to be proved in accordance with law, having regard to the right of the accused under Article 20(3) of the Constitution of India. However, when the prosecution, which is called upon by the accused, to admit or deny the document, does neither of the things and chooses to stay put with the document, a different situation would arise. In such a case, perspective of the right would change from that of fundamental to procedural, for, Article 20(3) is available to only those persons who are accused of any offence and not to those who allege commission of offence by others. Therefore, a criminal Court would have to meet silence of the prosecution in respect of a document in a different way, depending on the nature and contents of the document and the law of proof of documents applicable to the fact situation. In other words, facts of each case would trigger the effect of prosecution silence under Section 294 of Code of Criminal Procedure. Having analysed Section 294, Cr.P.C., so, let us now examine the impugned order for its congruence to law or otherwise.

11. In the aforesaid background, in the present case also while allowing the application below Exh. 71 dated 1.12.2023, there is a specific observation made by the learned Sessions Court that the evidence has not commenced and as such, the

application for production of documents filed by the prosecution is allowed.

12. On perusal of the impugned order, I find that the afore-stated requirements of law have been followed by the learned Sessions Judge. He has considered the fact that as evidence has not begun there would be no question of causing of any prejudice to accused, and rightly so. He has observed that so far as the proof and effect of the document is concerned, same would have to be gone into at an appropriate stage, which again cannot be said to be a view standing opposite to law. Therefore, I find neither any illegality nor arbitrariness in the impugned order. There is no merit in the present writ petition and it deserves to be dismissed.

13. Thus, the petitioners have failed to make out a case for interference in the extraordinary jurisdiction of this Court, in the orders dated 1.12.2023 and 5.1.2026 passed by the learned Sessions Judge., Parbhani, below Exhibits 71 and 125, respectively, in Sessions Trial No. 95 of 2020. The petition is, therefore, devoid of substance and is hereby dismissed.

[MEHROZ K. PATHAN]
JUDGE

Majeed