

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 768 OF 2026

1. Atish Sonu Singh
Age: 23 Years,
Add: 30 Feet Road, Near Ganesh Mandir
Gali No. 3, Indira Nagar,
Mankhurd, Mumbai ...Petitioner

Versus.

1. State of Maharashtra,
(At the instance of Mankhurd Police
Station) ...Respondent

Ms. Krishma Joshi a/w Sangram Jadhav i/b Vipul Dushing, for the
Petitioner.

Mr. Tanveer Khan, APP for the Respondent – State.

PSI Sanjay Gaonkar, Mankhurd Police Station, is present.

CORAM : ASHWIN D. BHOBE, J.
DATED : 26th FEBRUARY, 2026

ORAL JUDGMENT : -

1. Heard Ms. Krishma Joshi, learned advocate for the
Petitioner, and Mr. Tanveer Khan, learned APP for the
Respondent – State.

2. Rule. Rule made returnable forthwith and by consent
of the parties, heard finally.

3. The Petitioner, through this petition filed under

Section 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, is before this Court challenging the order dated 10th November 2025 (“impugned order”) passed by the Additional Sessions Judge, City Civil and Sessions Court, Greater Bombay, Mumbai ("Sessions Court"), on the application filed by the Petitioner, seeking the statements recorded under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.).

4. Material facts relevant to the adjudication of this petition are that the Petitioner (Accused No.2) and two other accused are charged with offences under Section 302, 506(2), 504, 34 of the Indian Penal Code, 1860, along with Sections 3, 4, 25 of the Arms Act, 1959, and Sections 37(1) (a) and 135 of the Maharashtra Police Act, 1951. A charge sheet was filed on 24th August, 2023, following investigation, and is registered as Sessions case No. 767 of 2023 with the Sessions Court.

5. Charge in Sessions case No. 767 of 2023 was framed on 29th November, 2024, and the Petitioner as well as the other Accused pleaded not guilty.

6. The Petitioner, along with co-accused, filed an application before the Sessions Court seeking copies of the statements recorded under Section 164 of the Code of Criminal Procedure, 1973.

7. Respondent-Prosecution opposed the request.
8. By the impugned order, the Sessions Court rejected the application filed by the Petitioner, and the order reads as follows:

ORDER

Perused the application and say of prosecution. Heard both the sides. The present application is taken out by the accused No.3 for providing him the copies of statements recorded U/s 164 of Cr.PC. on the ground that it is necessary for adjudication of the case. However Ld. APP has objected for opening of the envelop containing statement recorded U/s 164 of Cr.PC. at this stage.

2. I have gone through the Judgment delivered by Hon'ble Supreme Court in the case Miss 'A' vs State of Uttar Pradesh and another (Criminal appeal No.659/2020) decided on 08.10.2020 in this case it is held that right to receive a copy of such a statement recorded u/s 164 of Cr.PC. will arise only after cognizance is taken and at the stage contemplated by Sections 207 and 208 of the Code and not before.

3. The case in hand is concerned charge is framed against the accused persons and matter is now for evidence. The evidence is yet to be started. Besides this in the entire application there is no any reason mentioned by the accused No.3 that what is the necessity right now of opening the envelop of statements recorded U/s 164 of Cr.PC. Therefore taking into consideration this peculiar fact and stage of the matter I do not think fit that this is a proper stage of opening of the statement recorded U/s 164 of Cr.P. C. so accordingly application is rejected with liberty to the accused to move fresh application at the proper stage for the same purpose.

9. Ms. Krishma Joshi, learned Advocate for the Petitioner, submits that the impugned order is perversely reasoned. She argues that the Sessions Court's reasons for dismissing the application are contrary to the law. She asserts that the Petitioner (accused) is entitled to all documents, including statements recorded under section 164 of Cr.P.C. prior to the trial. She contends that denying these documents would prejudice the Petitioner and lead to a miscarriage of justice. She, therefore, prays to set aside the impugned order and to direct the Sessions Court to furnish copies of the statements of witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973, which are part of Sessions Case No. 767 of 2023.

10. Mr Tanveer Khan, learned APP for the State, submits that no fault can be found in the impugned order, as the statements are in an envelope that would have to be opened at the stage of trial. He therefore supports the impugned order.

11. Arguments heard. Among the competing arguments, the main issue is at what stage the Accused can exercise the right to access the statements recorded under Section 164 of the Cr.P.C.?

12. A helpful reference can be made to the Hon'ble Supreme Court's ruling in *Vijaya Singh v. State of Uttarakhand* regarding Section 164 Cr.P.C., specifically in paragraphs 27 and 28, which read as follows:

27. *The jurisprudence concerning a statement under Section 164 CrPC is fairly clear. Such a statement is not considered as a substantive piece of evidence, as substantive oral evidence is one which is deposed before the Court and is subjected to cross-examination. However, Section 157 of Indian Evidence Act, 1872⁵ makes it clear that a statement under Section 164 CrPC could be used for both corroboration and contradiction. It could be used to corroborate the testimonies of other witnesses. In R. Shaji v. State of Kerala⁶, this Court discussed the two-fold objective of a statement under Section 164 CrPC as:*

“15. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in Court should be discarded, is not at all warranted ...”

The Court also recognized that the need for recording the statement of a witness under Section 164 CrPC arises when the witness appears to be connected to the accused and is prone to changing his version at a later stage due to influence. The relevant para reads thus:

“16. ... During the investigation, the Police Officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 Code of Criminal Procedure. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced ...”

28. Considering the conceptual requirement of recording a statement before a Judicial Magistrate during the course of investigation and the utility thereof, as prescribed in Section 157 of Evidence Act, it could be observed that a statement under Section 164, although not a substantive piece of evidence, not only meets the test of relevancy but could also be used for the purposes of contradiction and corroboration. A statement recorded under Section 164 CrPC serves a special purpose in a criminal investigation as a greater amount of credibility is attached to it for being recorded by a Judicial Magistrate and not by the Investigating Officer. A statement under Section 164 CrPC is not subjected to the constraints attached with a statement under Section 161 CrPC and the vigour of Section 162 CrPC does not apply to a statement under Section 164 CrPC. Therefore, it must be considered on a better footing. However, relevancy, admissibility and reliability are distinct concepts in the realm of the law of evidence. Thus, the weight to be attached to such a statement (reliability thereof) is to be determined by the Court on a case-to-case basis and the same would depend to some extent upon whether the witness has remained true to the statement or has resiled from it, but it would not be a conclusive factor. For, even if a witness has retracted from a statement, such retraction could be a result of manipulation and the Court has to examine the circumstances in which the statement was recorded, the reasons stated by the witness for retracting from the statement etc. Ultimately, what counts is whether the Court believes a statement to be true, and the ultimate test of reliability happens during the trial upon a calculated balancing of conflicting versions in light of the other evidence on record.”

13. Relevant Sections 207 and 208 of the Cr.P.C. are reproduced below.

“207:- Supply to the accused of copy of police report and other documents.—In any case

where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—

(i) the police report;

(ii) the first information report recorded under section 154;

(iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;

(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of

furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

208. Supply of copies of statements and documents to accused in other cases triable by Court of Session.—Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—

(i) the statements recorded under section 200 or section 202, of all persons examined by the Magistrate;

(ii) the statements and confessions, if any, recorded under section 161 or section 164;

(iii) any documents produced before the Magistrate on which the prosecution proposes to rely:

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.”

14. The Hon’ble Supreme Court, in the case of *MISS “A” v. The State of Uttar Pradesh & Anr.*¹, observed in paragraphs

¹ (2020) 10 SCC 505
Arjun

14, 15, and 17 as follows:

14. The directions issued by this Court in Shivanna [State of Karnataka v. Shivanna, (2014) 8 SCC 913 : (2014) 6 SCC (Cri) 420] were in the following backdrop: (SCC p. 914, paras 2-3)

“2. We had noted that the Fast Track Courts no doubt are being constituted for expeditious disposal of cases involving the charge of rape at the trial stage, but we are perturbed and anguished to notice that although there are Fast Track Courts for disposal of such cases, we do not yet have a fast track procedure for dealing with cases of rape and gang rape lodged under Section 376 IPC with the result that such heinous offences are repeated incessantly.

3. We had further observed that there is a pressing need to introduce drastic amendments into CrPC in the nature of fast track procedure for Fast Track Courts when we considered just and appropriate to issue notice and called upon the Union of India to file its response as to why it should not take initiative and sincere steps for introducing necessary amendment into the Criminal Procedure Code, 1973 involving trial for the charge of “rape” by directing that all the witnesses who are examined in relation to the offence and incident of rape cases should be straightaway produced preferably before the Lady Judicial Magistrate for recording their statement to be kept in sealed cover and thereafter the same be treated as evidence at the stage of trial by producing the same in record in accordance with law which may be put to test by subjecting it to cross-examination. We were and are further of the view that the statement of victim should as far as possible be recorded preferably before the Lady Judicial Magistrate under Section 164 CrPC skipping over the recording of statement by the police under Section 161 CrPC to be kept in sealed cover and thereafter the same be treated as evidence at the stage of trial which may be put to test by subjecting it to cross-examination.”

15. The directions issued by this Court were to the following effect: (Shivanna case [State of Karnataka

v. Shivanna, (2014) 8 SCC 913 : (2014) 6 SCC (Cri) 420] , SCC pp. 915-16, para 10)

“10.1. Upon receipt of information relating to the commission of offence of rape, the investigating officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 CrPC. A copy of the statement under Section 164 CrPC should be handed over to the investigating officer immediately with a specific direction that the contents of such statement under Section 164 CrPC should not be disclosed to any person till charge-sheet/report under Section 173 CrPC is filed.

10.2. The investigating officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.

10.3. The investigating officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.

10.4. If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the investigating officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.

10.5. Medical examination of the victim: Section 164-A CrPC inserted by Act 25 of 2005 in CrPC imposes an obligation on the part of the investigating officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 CrPC.”

...

17. The scheme of the relevant provisions of CrPC shows that after the conclusion of the investigation, an appropriate report under Section 173 CrPC is to be filed by the police giving information as required by

Section 173. In terms of Section 190 CrPC, the Magistrate concerned may take cognizance of any offence inter alia upon a police report. At the stage of exercise of power under Section 190 CrPC, as laid down by this Court in a number of decisions, the notable being the decision in Bhagwant Singh v. State [Bhagwant Singh v. State, (1985) 2 SCC 537, para 4 : 1985 SCC (Cri) 267] , the Magistrate may deem fit that the matter requires further investigation on certain aspects/issues and may pass appropriate direction. It is only after taking of the cognizance and issuance of process that the accused is entitled, in terms of Sections 207 and 208 CrPC, to copies of the documents referred to in the said provisions.

(emphasis supplied)

15. In the case of *Criminal Trials Guidelines Regarding Inadequacies & Deficiencies, In re v. State of Andhra Pradesh & Ors.*² made the following observations in paragraphs 11 and 21.

11. The Amici Curiae pointed out that at the commencement of trial, accused are only furnished with list of documents and statements which the prosecution relies on and are kept in the dark about other material, which the police or the prosecution may have in their possession, which may be exculpatory in nature, or absolve or help the accused. This Court is of the opinion that while furnishing the list of statements, documents and material objects under Sections 207/208 CrPC, the Magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under CrPC [“91. Summons to produce document or other thing.—(1) Whenever any court or any officer in charge of a police station considers that the production of any document or other thing is

² (2021) 10 SCC 598
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necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.(3) Nothing in this section shall be deemed—(a) to affect Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”] for their production during the trial, in the interests of justice. It is directed accordingly; the Draft Rules have been accordingly modified. [Rule 4(i)].

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21. The suo motu proceeding is disposed of in terms of the above directions.

DRAFT CRIMINAL RULES ON PRACTICE, 2021

Chapter I : Investigation

1...

2...

3...

4. Supply of documents under Sections 173, 207 and 208 CrPC.—(i) Every accused shall be supplied with statements of witness recorded under Sections 161 and 164 CrPC and a list of documents, material objects and exhibits seized during investigation and

relied upon by the investigating officer (IO) in accordance with Sections 207 and 208 CrPC.

Explanation : The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the investigating officer.

(emphasis supplied)

16. The above pronouncements clarify the Accused's right to access the statements recorded under Section 164 of the Cr.P.C. and the stage of such entitlement.

17. The facts, as in the case at hand, charge has been framed, and the stage of Sessions Case No. 767 of 2023 is at trial, which would entitle the Petitioner to copies of the statements recorded under Section 164 of the Cr.P.C..

18. Petitioners and the co-accused in Sessions Case No. 767 of 2023 were entitled to receive copies of the statements recorded under Section 164 of the Cr.P.C. without submitting an application. Denying these copies would be against the law and would also prejudice the Petitioner, as rightly submitted by Ms. Krishma Joshi.

19. The reasons given in the impugned order are perverse and do not fulfil the requirements of legality, necessitating this Court's intervention to prevent a miscarriage of justice.

20. In view of the above, the impugned order is quashed and set aside. Consequently, the application filed by the

Petitioner jointly with the co-accused seeking copies of the statements recorded under Section 164 of Cr.P.C. is allowed. The Sessions Court is directed to provide copies of the statements recorded under Section 164 of Cr.P.C. to the Petitioner/Accused in Sessions Case No. 767 of 2023.

21. Rule made absolute in the above terms. There shall be no orders as to cost.

[ASHWIN D. BHOBE, J.]

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