



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

CRIMINAL REVISION APPLICATION NO. 209 OF 2025

1. Dhiraj Vikas Hiwarkar,
Aged 22 years, Occ.- Student,
R/o. Ward No. 9, Lambatpura,
Savner, Nagpur.
2. Gokul Ramesh Likhari,
Aged 31 years, Occ.- Labour,
R/o. Bazar Chowk Supare Mohalla,
Khapa, Tah. Savner, Nagpur.
3. Liladhar Dharmendra Chauragade,
Aged 21 years, Occ.- Student,
R/o. Ward No. 2, Khairi Panjabrao,
Tah.- Savner, Nagpur.
4. Snehal Mukesh Surkar,
Aged 22 years, Occ.- Student,
R/o. Killapura Darga Road, Juni Vasti,
Khapa, Tah. Savner, Nagpur.

APPLICANTS

Versus

State of Maharashtra,
Thr. P.S. Khapa, Nagpur.

NON-APPLICANT

Mr. A.R. Rawlani, Advocate for the Applicants.
Mr. A.M. Joshi, APP for the Non-applicant/State.

CORAM : URMILA JOSHI PHALKE, J.

RESERVED ON : 26th MARCH, 2026.

PRONOUNCED ON : 02nd APRIL, 2026.

ORAL JUDGMENT :-

1. By preferring this Revision, the Applicants have challenged the order passed below Exh. 166 in Special Case No.628/2023 by which the Application of the original accused Nos.1, 2, 4, 5 and 7 to 12 for obtaining the copy of CD/DVD (Article-E, I, M, U and V) deposited in the Court, is partly allowed.

2. Brief facts which are necessary for the disposal of the present Revision are as under:

2(i). The mother of the victim lodged a report on 26.09.2023 at Police Station Khapa, Tahsil Saoner, District Nagpur, on the basis of which Crime No.413/2023 was registered against accused Nos.1 to 12 for the offences punishable under Sections 354-A, 354-D, 376(2)(n), 376(D), 376(DA), 506 of the Indian Penal Code and Sections 4, 6, 11 and 12 of the Protection of Children from Sexual Offence Act

2012 (for short “POCSO Act”) and also under Sections 67, 67-A, 67-B of the Information and Technology Act.

2(ii). As per the allegations the incident has occurred on 04.03.2023 and thereafter in the month of April 2023 in the house of accused No.5 namely Gokul @ Golu Ramesh Likhar at Khapa, Tahsil Saoner. On 02.03.2023, accused No.1 at 02.30 p.m threatened the victim and obtained her nude photographs. Thereafter on 04.03.2023 also accused Nos.1, 4, 5 and 7 have called her and taken her nude photographs forcibly in the house of accused No.5 and subjected her for forceful sexual assault. Again in the month of April 2023 accused Nos.5, 6, 8, 9 have subjected her for the forceful sexual assault and also threatened her that if she disclose the incident to anybody the photographs would be made viral. She was also threatened by accused Nos.2, 3, 10, 11 and 12 that they will make her photographs viral and tortured her. On the basis of the said report Police have registered the crime against the present Applicants.

2(iii). During investigation the mobile phones of accused as well as the victim and the father of the victim were seized and the same were forwarded to the analysis to the Regional

Forensic Science Laboratory, Nagpur (for short "RFSL"). The RFSL, Nagpur analyzed the said mobile phones and prepared the DVD/CDs and forwarded it to the Court alongwith the report. The prosecution has recorded the evidence of PW-1/Prajakta Subhash Pate Scientific Officer in RFSL, Nagpur.

2(iv). Her evidence shows that, on 13.10.2023 she received 3 sealed packets with two reference documents as per requisition vide outward No.4222/22 and also received 4 reference photographs. As per the said requisition, the mobile phone of victim and her father was received by her. On 13.10.2023 her department has received another requisition vide Outward No.4223/2023 alongwith three sealed packets, by which the mobile phones of accused No.3 Vikas Hedao, accused No.9 Gaurav Khubalkar and accused No.5 Gokul Likhar was received by her. On the same day, she also received the another requisition vide Outward No.4224/2023 by which three sealed packets containing three mobile phones of accused No.2 Luky @ Burnnt Dharmik, accused No.8 Sushil Krishna Dharmik and accused No.6 Nikhil Dhande was received by her. On the same day vide requisition Outward No.4225/2023 by which three

sealed packets containing three mobile phones of accused No.12 Pranay Sunil Dekate, accused No.10 Vikky Likhar and accused No.4 Ved @ Vedu Aawate was received by her. On the same day, another requisition vide Outward No.4226/2023 she has also received three sealed packets containing three mobile phones of accused No.1 Dhiraj @ Bhoraj Hiwarkar, accused No.7 Leeladhar Chouragade and accused No.11 Snehal Surkar.

2(v). Her evidence further shows that, she has started analysis of above mobile phones on 03.02.2025. As far as requisition O.W.No.4222/2023 is concerned, the first mobile phone was of victim, wherein she found one SIM which was of Jio company. The another packet was having a mobile of OPPO company. The Police have given the envelope No. Exh-2. In third packet 4 reference photographs of victim were found with different angles. On analysis of the said mobile phones she found obscene photographs in Exh.1 and Exh.3. The reference documents which were given to her was related to photographs, which were found in Exh.3. She has given its data in her report and Annexure in DVD, which is prepared by her. The said report is at Exh.161. She has mentioned all chats and social media

data found in Exh.1 in given Annexure DVD. She has also found videos in the mobile phones of victim Article-A. The photographs related to obscene data of victim is identified by her. There was details in user Account in two names. Victim was operating her mobile and chats on the name of Kavita Nimje and later on Diya. Vide requisition O.W.No.4223/2023 three mobile phones alongwith SIM cards were received by her office. The first mobile phone was of accused No.3 Vikas Hedao, which was having sim of Jio company and Vodafone. The second mobile phone was of accused No.9 Gaurav Khubalkar, which was Real me company, wherein the sim card was of a Jio company. The third mobile phone was of accused No.5 Gokul Likhar of Red me company. She has found SIMs of Jio company. She also found Facebook and snap chat in the mobile of accused No.3 Vikas Hedao. She found snap chat, whats app chat and call recording relating to the name which was mentioned as Kavita Nimje. She has prepared her report in CD which bears her signature.

2(vi). Her evidence shows that, some of the conversation was found to be deleted and some were intact. Vide requisition

O.W.No.4224/2023 she received three mobile phones. The said mobile phones are also analyzed by her which are of accused No.2 Luky Dharmik of Red me company, accused No.8 Sushil Dharmik of Y-53H company and accused No.6 Nikhil Dhande, which was Samsung J-6 company. She found snap chat conversation in the mobile phone of accused Sushil Dharmik. She has also found snap chat conversation in Annexure CD which is a part of her report. Similarly, she analyzed the mobile phones which she received vide requisition O.W.No.4225/2023. The first mobile phone of accused no.12 Pranay Dekate was not in working condition. No data was Found. In the mobile phone of accused No.4 Ved Aawate Instagram and Facebook chat was found. In the mobile phone photographs are found but it were not obscene. She has given the data in CD. Vide requisition O.W.No.4226/2023 also she has received three mobile phones of accused. The same are also analyzed by her.

2(vii). Her evidence shows that, she has found obscene images and videos of a person in reference photographs and documents in mobile phone of accused no.1 and mobile phone of accused No.7 Liladhar. She has also found snap chat, whats

app chat, call recording and conversation. She has prepared the data in the CD and DVD.

2(viii). Her evidence shows that, chatting and audios are visible. In reference No. 4223/2023 of Exh.6 found chats of accused No.5 with accused No.4 relating to the photographs. Accused No.4 has sent the photographs of victim to accused No.5.

2(ix). All these CDs/DVDs were produced before the Court alongwith Forensic Analysis Report. Thereafter the application came to be filed by the accused on the ground that during evidence the Forensic Expert deposed regarding many messages as deleted, so also at that time prosecution did not open all the folders of those five DVDs/CDs. The defence wants to examine this witness and thereafter the victim after going through all those folders of five DVDs/CDs, as the same may be helpful to the defence. It is further stated that, the evidence shows that one or two photographs/videos were found to be obscene but there are so many folders, and therefore, it is very difficult for the defence to verify those folders in the Court, and therefore,

the copies of the same be given to them alongwith the RFL examination report.

2(x). The said application was strongly opposed by the State on the ground that, the accused persons are facing the charges of subjecting the minor victim girl for forceful sexual assault which is a gang-rape alongwith viral photographs of victim. As per the provisions of the Indian Penal Code and POCSO Act the copies of electronic evidence could not be given to the accused or their Advocates as the issue of privacy and dignity of the victim is involved, and therefore, the application was partly allowed. The reports of Regional Forensic Science Laboratory were directed to be given to the present Applicants.

2(xi). Being aggrieved and dissatisfied with the same, the present Revision Application is filed on the ground that in the interest of justice and for the fair trial the application deserves to be allowed, as there was nothing incriminating in DVDs and CDs. It is an absolute right of the accused to get copies of those 4 DVDs and CDs. The partly nude photographs and videos is alleged to be found only in one DVD and CD which is marked as Article-U. For the defence of the accused, it is necessary to put

the relevant questions, and therefore, the copies of said DVDs and CDs are required, and therefore, directions be given to the Sessions Judge for furnishing the copy of said DVDs and CDs Articles-E, I, M, U and V.

3. Heard learned Counsel for the Applicants, who submitted that, in view of Article 21 of the Constitution of India the accused has right to have a fair trial and for the fair trial these documents are required. The entire defence of the accused is relied upon the said documents and if the said documents are not handed over to the accused it would cause prejudice to the accused, and therefore, in the interest of justice and for the fair trial, the said documents be handed over to the Applicants/accused.

4. After going through the submissions and especially the evidence of the Expert and the report which is forwarded by the Expert, after verification of the mobile phones of victim as well as the accused persons it reveals that vide reference No.4222/2023 she received mobile phones of the victim and her father. The results of analyses shows that, on thorough cyber forensic analysis of mobile phones of victim and her father

obscene images similar to the person present in reference photographs provided Exh.6 to Exh.9 was found in Exh.1 and this data is given in enclosed DVD. Exh.162 is the another analyses report with reference No.4223/2023, by which the mobile phone of accused No.3 Vikas Hedao, accused No.9 Gaurav Khubalkar and accused No. 5 Gokul Likhar were analyzed. The analysis of the said report shows that, the obscene images and videos similar to a person in reference photographs and snap chat, whats app chat, contacts, call recordings and other data was found. She converted the said data in a CD. Vide reference No.4224/2023 the mobile phones of accused No.2 Lucky @ Bunnt Dharmik, accused No.8 Sushil Krishna Dharmik and accused No.6 Nikhil Dhande were analyzed by her and on the analyses she found snap chat conversion, obscene images and videos similar to a person in reference photographs and social media data related to obscene images and videos similar to a person in reference photographs. The said data was given by her in a CD. Vide reference No.4225/23 she has received the mobile phones of accused No.12 Pranay Sunil Dekate, accused No.10 Vikky Likhar and accused No.4 Ved @ Vedu Aawate which are also analyzed by

her, wherein also she has found Facebook, Instagram chats and contacts related to mobile number and social media data related to obscene images and videos similar to a person in reference photographs are also found. Vide reference No.4226/2023 she received the mobile phones of accused No.1 Dhiraj @ Bhoraj Hiwarkar, accused No.7 Leeladhar Chouragade and accused No.11 Snehal Surkar, which are also verified by her and on analysis she found obscene images and videos to the person present in reference photographs and snap chat, whats app chat, call recordings, snap chat conversions. Thus, she has converted the said data in a CD. Thus, all CDs and DVDs are forwarded to the Court after the analyses.

5. The issue involved is about whether the Applicants in view of Section 207 of the Code of Criminal Procedure (Cr.PC. for short) entitled to receive the said documents or the CDs.

6. As far as the definition of the document is concerned, Section 2(1)(t) of the Information Technology Act defines the “electronic record” means data, record or data generated, image or sound stored, received or sent in an

electronic form or micro film or computer generated micro fiche.

7. Section 3 of the Evidence Act, also defines “Document” means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

8. Section 2(d) of the Bharatiya Sakshya Adhiniyam, 2023 the definition of “document” means any matter expressed or described or otherwise recorded upon any substance by means of letters, figures or marks or any other means or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter and includes electronic and digital records.

9. Now, as per the new definition of “Document” in view of Section 2(e) of the Bharatiya Sakshya Adhiniyam, 2023 “evidence” means and includes- (i) all statements including statements given electronically which the Court permits or requires to be made before it by witnesses in relation to matters

of fact under inquiry and such statements are called oral evidence; (ii) all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence. Thus, the said DVD and CD are covered under the definition of the document.

10. Section 207 of Cr.P.C. deals with the supply to the accused of copy of police report and other documents. The first proviso enables the Magistrate to withhold any part thereof referred to in clause (iii), from the accused on being satisfied with the note and the reasons specified by the investigating officer as predicated in sub-Section (6) of Section 173. However, when it comes to furnishing of documents submitted by the investigating officer alongwith police report, the Magistrate can withhold only such document referred to in clause (v), which in his opinion, is “voluminous”. In that case, the accused can be permitted to take inspection of the concerned document either personally or through his pleader in Court. In other words, Section 207 of the 1973 Code does not empower the Magistrate to withhold any “document” submitted by the investigating officer alongwith the police report except when it is voluminous.

Thus, the Magistrate is under obligation under Section 207 to furnish to the accused, free of cost, copies of the documents mentioned therein, without any delay. Section 207 puts an obligation on the prosecution to furnish to the accused, free of cost, copies of the documents mentioned therein, without any delay. It includes, documents or the relevant extracts thereof which are forwarded by the police to the Magistrate with its report under Section 173(5) of the Code. Such a compliance has to be made on the first date when the accused appears or is brought before the Magistrate at the commencement of the trial inasmuch as Section 238 of the Code warrants the Magistrate to satisfy himself that provisions of Section 207 have been complied with. Proviso to Section 207 states that if documents are voluminous, instead of furnishing the accused with the copy thereof, the Magistrate can allow the accused to inspect it either personally or through pleader in the Court.

11. Thus, the right of the accused with regard to disclosure of documents is a limited right but is codified and is the very foundation of a fair investigation and trial.

12. During the submissions, learned Counsel for the Applicants has placed reliance on *P Gopalkrishnan Alias Dileep Vs. State of Kerala & Anr., (2020) 9 SCC 161*. The fundamental rights of the accused under Article 21 of the Constitution of India regarding a fair trial and the right to privacy of the victim both under Articles 14 as well as Article 21 of the Constitution of India was considered by the Hon'ble Apex Court in the said judgment.

13. In para 50, it is observed by the Hon'ble Apex Court as under:

“50. In conclusion, we hold that the contents of the memory card/pen drive being electronic record must be regarded as a document. If the prosecution is relying on the same, ordinarily, the accused must be given a cloned copy thereof to enable him/her to present an effective defence during the trial. However, in cases involving issues such as of privacy of the complainant/witness or his/her identity, the Court may be justified in providing only inspection thereof to the accused and his/her lawyer or expert for presenting effective defence during the trial. The court may issue suitable directions to balance the interests of both sides.”

14. It has been further observed by the Hon'ble Apex Court in para 49 which reads as under:

“49. If the accused or his lawyer himself, additionally, intends to inspect the contents of the memory card/pen-

drive in question, he can request the Magistrate to provide him inspection in Court, if necessary, even for more than once alongwith his lawyer and I.T. expert to enable him to effectively defend himself during the trial. If such an application is filed, the Magistrate must consider the same appropriately and exercise judicious discretion with objectivity while ensuring that it is not an attempt by the accused to protract the trial. While allowing the accused and his lawyer or authorized I.T. expert, all care must be taken that they do not carry any devices much less electronic devices, including mobile phone which may have the capability of copying or transferring the electronic record thereof or mutating the contents of the memory card/pen-drive in any manner. Such multipronged approach may subserve the ends of justice and also effectuate the right of accused to a fair trial guaranteed under Article 21 of the Constitution.”

15. Thus, considering the right of the accused as to the fair trial which is enshrined under the Constitution of India and which cannot be taken away by any means. So the right of the accused to defend a case and to prove his innocence is the Constitutional right and for which he should get all the prosecution records before trial to point out the flaw in the prosecution case and also to establish his innocence. With this intent Section 207 of Cr.P.C. empowers the Magistrate to furnish the copies of Police report and other documents while dealing with the same and Sessions Courts are empowered to do the said exercise under Section 208 of Cr.P.C. At the same time Section 228A of IPC which came into effect by way of

amendment from 25.12.1983 and subsequently amended with effect from 03.02.2013 and 21.04.2018 prohibits printing or publishing the name or any matter which make known the identity of any person against whom an offence under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA and 376DB or Section 376E is alleged or found to have been committed. Similarly, under Section 23(1) of POCSO Act penalizes making any report or presenting comments on any child or any form of media or studio or photographic facilities without having complete and authentic information which may have the effect of lowering the reputation or infringing upon the privacy of a POCSO victim by any person. Thus, in view of Section 228A of IPC and under Section 23(1) of POCSO Act, disclosing the identity by way of reporting, commenting, or by printing or publishing the same are offences covered by Section 23 (1) of POCSO Act and under Section 228A of IPC. Therefore, the contravention of the above provisions would make the person an offender under the said provisions.

16. While reading Sections 207 and 208 of Cr.PC. and the right of the accused to get all documents which form part of

the prosecution records to defend his case requires a consideration. At the same time, Section 33(7) of POCSO Act imposes restrictions so as to ensure that the identity of the child is not disclosed. So the Courts should consider a balance between the privacy of the victims of rape and POCSO offences with that of the right of the accused to defend his case and also gives effect to all the above provisions, without making any of the provisions as redundant or superfluous. Therefore, when prosecution records are given to the accused in compliance with Sections 207 and 208 of Cr.P.C, it is not fair to hold that the accused is not entitled to get prosecution records without being masked to defend the case. At the same time, on getting copies of the documents the accused and the Counsel appearing for the accused are duty-bound to ensure the privacy of the victim without being disclosed by printing, publishing, reporting and commenting which would have the effect of infringing upon the privacy of the victims in any manner. Thus, subject to the above restrictions to ensure fair trial some restrictions requires to be imposed.

17. While maintaining the balance of this situation, the observation of the Hon'ble Apex Court in the case of *P*

Gopalkrishnan Alias Dileep (supra) is relevant, wherein it is observed by the Hon'ble Apex Court as under:

“61. Be it stated, circumstances may emerge that may necessitate for balancing between intra-fundamental rights. It has been distinctly understood that the test that has to be applied while balancing the two fundamental rights or inter fundamental rights, the principles applied may be different than the principle to be applied in intra-conflict between the same fundamental right ... Thus, there can be two individuals both having legitimacy to claim or assert the right. The factum of legitimacy is a primary consideration. It has to be remembered that no fundamental right is absolute and it can have limitations in certain circumstances... Therefore, if the collective interest or the public interest that serves the public cause and further has the legitimacy to claim or assert a fundamental right, then only it can put forth that their right should be protected. There can be no denial of the fact that the rights of the victims for a fair trial is an inseparable aspect of Article 21 of the Constitution and when they assert that right by themselves as well as the part of the collective, the conception of public interest gets galvanised. The accentuated public interest in such circumstances has to be given primacy, for it furthers and promotes “Rule of Law”. It may be clarified at once that the test of primacy which is based on legitimacy and the public interest has to be adjudged on the facts of each case and cannot be stated in abstract terms. It will require studied scanning of facts, the competing interests and the ultimate perception of the balancing that would subserve the larger public interest and serve the majesty of rule of law.”

18. Thus, it is observed by the Hon'ble Apex Court that, the right to fair trial is not singularly absolute, as is perceived, from the perspective of the accused. It takes in its ambit and sweep the right of the victim(s) and the society at large. These

factors would collectively allude and constitute the Rule of Law i.e. free and fair trial.

19. It is further observed by the Hon'ble Apex Court that, the fair trial which is constitutionally protected as a substantial right under Article 21 and also the statutory protection, does invite for consideration a sense of conflict with the interest of the victim(s) or the collective/interest of the society. When there is an intra-conflict in respect of the same fundamental right from the true perceptions, it is the obligation of the constitutional courts to weigh the balance in certain circumstances, the interest of the society as a whole, when it would promote and instil Rule of Law. A fair trial is not what the accused wants in the name of fair trial. Fair trial must soothe the ultimate justice which is sought individually, but is subservient and would not prevail when fair trial requires transfer of the criminal proceedings.

20. In view of the above observations of the Hon'ble Apex Court, it would be appropriate and in the interest of justice to allow the prayer of the present Applicants with a restriction as the CDs and DVDs as per the evidence of PW-1

Forensic Expert contains the obscene material. Therefore, it would not be appropriate to give a copy to the present Applicants, and therefore, to protect the interest of the accused as well as to protect the interest of the victim and considering that the contents of the said CDs or DVDs being an electronic record, must be regarded as a document. If the prosecution is relying upon the same, the accused is having a right to have an access and copy thereof to enable him/her to present an effective defence during the trial. However, in cases involving issues such as of privacy of the complainant/witness or his or her identity, it would be justified in providing only inspection thereof to the accused and as his/her Lawyer or Expert for presenting the effective defence during the trial, and therefore, the Application deserves to be allowed partly. Accordingly, I proceed to pass the following order.

ORDER

- i. Criminal Revision Application is **partly allowed**.
- ii. The Applicants/accused are permitted to inspect the electronic record through his Counsel and the IT Expert, if they chooses to engage such an Expert for such purpose.

- iii. The Extra Joint District Judge-4 and Additional Sessions Judge, Nagpur shall permit the inspection of the said CDs and DVDs to the learned Counsel for the Applicants/accused with the help of IT Expert, if they chooses to engage such an Expert for such purpose.

21. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)

S.D.Bhimte