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**IN THE COURT OF ADDITIONAL SESSIONS JUDGE-II,
AURANGABAD**

**Sessions Trial No. 01/2021 [208/2023]
Arising out of Amba Case No. 14/2020**

State through (Dharmendra Prasad)

.....Prosecution

Versus

- 1. Rohit Kumar @ Rohit Kumar Sinha**
- 2. Abhishek Kumar**
- 3. Deepak Vishwakarma**

.....Accused Persons

ORDER dated 06.05.2024

Attendance filed on behalf of accused Abhishek Kumar and Deepak Kumar and another accused Rohit Kumar was represented through his lawyer under the provision of 317 of Cr. P. C. which is accepted for today.

Case record was put up for passing order from petition dated 12.03.2024 filed on behalf of the accused persons and its rejoinder dated 27.03.2024 filed on behalf of the prosecution.

Heard the Ld. Counsel for petitioners and Ld. Addl. PP on the aforesaid petition and its rejoinder.

The Ld. Counsel for accused persons has submitted that instance case is running for defence evidence. It is admitted fact that prior to death deceased Sanni Kumar was admitted in Ganga Sewa Sadan Hospital, Chandpur Chauraha, near Banarash Bits Collectory farm Varanashi for treatment and his treatment had gone in the aforesaid hospital and during the treatment he died in the aforesaid hospital. The Ld. Counsel has further contended that during the treatment surgical operation of the head of the deceased Sanni Kumar was done and prior to operation high risk consent was given by the informant who is father of the deceased Sanni Kumar and in high risk consent the Dharmendra Kumar had written on high risk consent paper that patient Sanni Kumar fell down from Cycle and due to which he sustained injury in his head and became unconscious and he was admitted in serious condition in the aforesaid hospital, if during the operation something is happened for which hospital will be not guilty and he will not take any legal action against the hospital administration. The Ld. Counsel has further contended that a petition was filed on behalf of the accused persons to get called for the aforesaid high risk consent paper from Ganga Sewa Sadan Hospital, Varanashi and same was allowed by the court vide order dated 18.07.2023 and letter was issued by the court to the aforesaid hospital for aforesaid high risk consent but same was not received . Several efforts

were taken to call for the aforesaid documents but ultimately the same was not received as yet. In the meantime accused persons applied for aforesaid documents under the RTI Act and same was received on 16.02.2024 to the accused persons through registered post and same was filed in the court. Xerox copy of high risk consent paper with seal of the aforesaid hospital was also sent with information by the Ganga Sewa Sadan, Hospital. As the aforesaid documents were received under RTI Act therefore same public document and same may be marked as exhibit admitting as evidence. The Ld. Counsel has further contended that information obtained under the RTI Act is part of the documents held by public authority, who are gazetted officer, a certified copy of document received by virtue of the RTI Act is secondary evidence as provided under section 63 of Evidence Act, it can be used as provided by government authorities, certified under the government seal. For information obtained under the RTI Act to be admissible in court, it is essential that a certified copy of the same is obtained. The Ld. Addl. Counsel prays that the aforesaid documents filed by the accused persons may be admitted as evidence and same may be marked as exhibit.

The Ld. Addl. PP has vehemently opposed the prayer of the defence and submitted that the alleged documents issued by the Director of Ganga Sewa Sadan Hospital is not public document because the aforesaid hospital is not government hospital nor it is concerned to any government hospital and issuing authority of the aforesaid document i.e. Director is also not Government employee and whatsoever register kept there is not prescribed by state or central government. The document extracted there from the allegedly provided through RTI process is not amount to be public documents. The Ld. APP has further contended that the alleged high risk consent paper does not bear the parents name and address and also name and address of the director concerned. The aforesaid high risk consent document cannot be either admitted as evidence or marked exhibit, therefore aforesaid petition may be dismissed.

Perused the case record as well as the documents filed on behalf of the accused persons. On perusal of the high risk consent paper it transpires that it is xerox copy and upon which a seal of the aforesaid hospital has been put. Upon the aforesaid paper the certificate regarding compare with original has not been mentioned upon the aforesaid paper. Therefore, the aforesaid paper cannot be treated as certified copy of the original high risk consent paper. Therefore same does not come in the preview of public document as provided under the provision of 74 of Evidence Act. In case of *Narayan Singh Vs. Kala Ram @ Kalu Ram Kushwaha* (decided on 19th March, 2015 in writ petition no. 7860/2014) it has been decided that

clause (f) of section 65 of Evidence Act makes it crystal clear a certified copy permitted under the Evidence Act or by any other law enforce can be treated as secondary evidence and right to information Act, in the aforesaid court view, falls within the ambit of “by any other law enforce in India”. Thus in the aforesaid view the aforesaid document filed by the accused persons also does not come into the ambit of secondary evidence because the aforesaid document is not certified copy of the original high risk consent paper. Therefore cannot be admitted the same as secondary evidence also.

Having considered the above facts and circumstances as well as the material available on case record and also in the view of the aforesaid judgment the documents filed by the accused persons cannot be admitted as primary documents or secondary documents therefore, aforesaid petition of the accused persons is hereby **rejected.**

Dictated and Corrected by

(Dhananjay. Kumar Mishra)
Addl. Sessions Judge-II,
Aurangabad.