

**:-: ORDER BELOW APPLICATION AT EXHIBIT NO.66 IN
SESSIONS CASE NO.48 OF 2021 :-:**

Appearance :-

Mr.V.H.Kanara, learned advocate for accused No.1.

Mr.D.R.Trivedi, learned Ad.PP for the State.

With

Mr.U.D.Chavda, learned advocate for complainant.

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1. Present application has been filed by learned advocate Mr.V.H.Kanara for the accused No.1 under Section 94 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 91 of the Code of Criminal Procedure). Mr.Kanara has also filed written submission vide Exh.69. The main contentions of the argument is that CCTV footage of the place where alleged incident took place is required to be brought on record as it is important piece of evidence. He has stated that at present, complainant has entered into witness-box and at present trial in at the stage of cross-examination. He has further stated that the crucial facts are required to be put before the said witness and relevant facts are recorded in CCTV footage. It is required to note that Mr.Kanara has submitted that Jatin Vithlani that is owner of 'Jalaram Restaurant', where incident took place and that he has given statement before the Police that he handed over the Pen Drive to Police in which CCTV footage are recorded. Thus, according to Mr.Kanara, said Pen Drive is on record, hence Police Authority may be directed to hand over the Pen Drive, so that he can cross-examine the complainant in effective manner.

2. It is required to note that Mr.Kanara has further submitted that he has made another request to provide medical case papers, which is

complied and he has been given the copy of the same. Hence, his focus is on the CCTV footage only and prayed to pass appropriate order.

3. It is required to note that learned APP Mr. Trivedi has stated that accused person has filed present application at belated stage. He could have filed this application before starting of the trial of this case. The present case is pertaining to the year 2021 and charge has framed on 11/09/2024. He has submitted that Mr.Chavda for complainant has stated that the complainant is Army Officer and he came at Jamnagar on leave for limited period and another witness Kuldeep is to return to Dubai on 26th September-2025 and he would not be available in future. Hence, to delay the proceedings and to avoid cross-examination, present application is filed at belated stage. Further, learned APP Mr.Trivedi stated that he has inquired from Investigating Officer and four Investigating Officer have investigated the matter and have contributed in investigation. Further Pen Drive is not available in the record of Police Authority also, according pursis is filed at Exh.70.

4. Further Mr. Chavda appearing for complainant has submitted that if Pen Drive is available, then Police Authority is required to handover the same to the accused and he has no objection, otherwise, present application is required to be dismissed as it was filed at belated stage.

5. I have heard all the learned advocates and perused the record.

6. It is pertinent to note that learned advocate Mr.Kanara has submitted that application under Section 91 of the Code of Criminal Procedure can be filed at any stage of trial and for that, he has relied upon the judgment of Hon'ble Apex Court titled as **Vijay Natvarlal Tank Vs State of Gujarat,reported in 2018 (2) GLR-1705.**

In this case Hon'ble Apex Court has held that “ related documents such as all statements recorded by the Investigating Officer, even, there may contradiction in such documents and accused may like to utilize the same for his benefit and the end of justice in that behalf can be secured by providing to him the copies of all such statements. Therefore, applicant is entitled to call for documents.”

Further, Mr.Kanara has relied upon the case of **Maheshchandra K.Trivedi Vs State of Gujarat, reported in 1999 (0)-AIJEL-HC-207244**, Hon'ble Gujarat High Court has held that “ As per the provision of Section 91 of the Code of Criminal Procedure, if it is not used at proper time or stage then, defence of the accused might be prejudiced and at any stage, before the accused is compelled to enter into defence, he can legitimately pray that Prosecution be asked to produce certain documents.”

Learned Advocate Mr.Kanara has further submitted that in the case of **Vijay Natvarlal Tank (Supra)**, the application under Section 91 of the Code of Criminal Procedure was filed at belated stage that is after Seven witnesses were examined and in that case the Court has directed to provide necessary documents to the accused. The Hon'ble Gujarat High relied upon and quoted the ratio of **Nitya Dharmananda @ K.Lenin Vs Sri Gopal Sheelum Reddy, reported in AIR-2017 SC5846**, wherein Hon'ble Apex Court has observed that Court has ample power to call for the certain documents to avoid irregularity and illegality.

7. Now, deciding with submission of Mr.Kanara, ist is required to note that looking to the ratio of **Nitya Dharmananda @ K.Lenin (Supra)**, the Hon'ble Apex Court has observed that before the stage of defence, accused has no right to seek certain documents and it is for the

Court to decide and it is the discretion of the Court to take necessary steps to issue direction, considering the facts and circumstances, thus it is not mandatory to pass any order before defence start. In the case of **Vijay Natvarlal Tank (Supra)**, documents called by the accused were the part of the Court proceedings which could have been used for purpose of defence and under that circumstances, direction was given to provide the documents. Here in the case, Police authority does not have any Pen Drive with them.

8. Learned advocate Mr.Kanara has relied upon the judgment of **Maheshchandra K.Trivedi (Supra)**, wherein Hon'ble Gujarat High Court has observed that at the time of issuance of direction to produce certain documents under Section 91 of the Code of Criminal Procedure, it will be open for Prosecution to state before the learned Sessions Judge that any of the documents for which application is filed, is not available to the Prosecution or they are not in custody, then in that event, the Court will have to appreciate the entire contingency in light of the case put forward by the Prosecution and/or defence.

Herein present case also, Police authority does not have Pen Drive as it is not available, hence as per ration of the said authority, now the accused has to avail other remedy as per law.

9. It is required to note that in case of **Nitya Dharmananda @ K.Lenin (Supra)**, it is observed by the Hon'ble Apex Court that before the stage of defence, accused has no right to call for the documents under Section 91 of the Code of Criminal Procedure, it is only direction of Court, which can be used by Court suo moto to secure justice.

10. It is required to note that herein the case on hand, trial has commenced since 11/09/2024 and now after One year, present

application is filed. It is required to note that both the witnesses that is complainant and witness Kuldeep are witnesses who are available for limited period. It is required to note that learned advocate for accused informed well in advance, so that they can prepare and can get themselves ready for cross-examination. Further, when complainant and other witness Kuldeep remained present before the Court, now this application is filed. It is required to note that had it been the intention on the part of the accused or his lawyer to get the Pen Drive they could have filed appropriate application at the earlier point of time.

Under these facts and circumstances, present Application is not required to be entertained, hence, following order is hereby passed ;

::: FINAL ORDER :::

1. Present application seeking production of Pen Drive under Section 91 of the Code of Criminal Procedure is hereby **dismissed**.
2. It will be open for the accused to take necessary step at stage of his defence.

The order is pronounced in the open Court on this 17th day of September -2025 under my hand and seal.

Date: -17/09/2025
Place: - Jamnagar.
A J RAVAL/PS

(Nehalkumar Rajeshbhai Joshi)
Sessions Judge, Jamnagar
Code No.: GJ01318