

ORDER PASSED BELOW EXH. 890 IN SESSIONS CASE**No.103/2018**

Read the application and say of prosecution along with informant filed vide Exh. 894. Heard both sides.

02. By way of present application, accused No 11 prayed to direct Police Inspector, West Deopur Police Station to produce three pen drives, mobile bill, finance documents, the statements of witnesses and panchnamas. Accused No 11 has raised the defense of alibi.

03. Learned advocate of accused No. 11 submits that electronic evidence is either primary or secondary and the same is available with accused to show that at the time of incident he was present in Tanisha Mobile Shop, Parola road, Dhule. His next submission is that the pen drives are sought to produce because they are deliberately suppressed by the investigation officer during the investigation. The original DVR and the said pen drives are required to be forwarded to the FSL to show how I. O. tried to suppress evidence. As the said pen drives are in possession of investigation officer as admitted by P. W. 31 PI Satish Gorade, in cross-examination, those are sought under Section 91 of Cr. P. C. to show how biased investigation is conducted against accused No. 11. According to learned advocate the order of Hon'ble Supreme Court in Criminal

Appeal Nos. 55 – 56 2021 in Special Leave Petition (CRL) Nos. 5038 – 5039 of 2020 dated 19/01/2021 is in respect of bail application only and therefore, it is prayed to allow the application.

04. On the contrary, learned PP argued that in the bail order of the Hon'ble Supreme Court dated 19/01/2021 the order of Hon'ble High Court thereby directing the investigation officer to examine the CCTV footage and submit the report is set aside. The report at Exh. 769 in respect of the said three pen drives submitted by P. W. 31 PI Satish Gorade, indicates that the CCTV footage in the two pen drives is not visible and the CCTV footage in the third pen drive is not vivid. Original hard disc is not produced by the accused. Thus, prayed for rejection of application.

05. It is not disputed by prosecution that three pen drives, mobile bill, finance documents were submitted before the investigation officer during the investigation. P. W. 31 PI Satish Gorade, admitted in cross-examination about the same. The order of the Hon'ble High Court thereby directing the examination of CCTV footage and submitting its report is set aside by the Hon'ble Supreme Court. It is pertinent to note that the said order was in respect of the bail application filed by the accused No. 11. At present the stage of the case is for leading Defense Evidence. When an accused person or anyone on his

behalf produces CCTV footage to the investigation officer, it becomes a part of investigation. Though, accused has right to access all documents and material collected during the process of investigation, including the CCTV footage, it cannot be ignored that original hard disc i.e. primary evidence is with the accused or he can avail other remedies for production of the primary evidence. The accused has every right to prove his defense of alibi. However, for that purpose, the pen drives i. e. secondary evidence produced before the I. O. is not necessary for the decision of the case. As regards the contention of defense that biased investigation conducted against accused No. 11, is the matter of consideration at the stage of final arguments. The defense of the accused is of alibi and not of biased investigation conducted by the investigation officer. The accused is required to prove his defense. When primary evidence can be produced in the Court, there is no requirement to direct the investigation officer to produce the three pen drives submitted by the defense during the process of investigation.

06. So far as the mobile bill and finance documents are considered, it is admitted by P. W. 31 PI Satish Gorade, that those were produced before him by sister of accused No. 11. Though it is admitted by P. W. 31 PI Satish Gorade, that he recorded statements of some of the witnesses and conducted panchnamas, the charge-sheet is already filed and the stage of

proceeding is for leading Defense Evidence. Eventually, it would not be justifiable to direct the investigation officer to produce the said statements and panchnamas. Rather, it would be an interference in the process of investigation. In the result, I am of the opinion that only direction to produce the mobile bill and finance documents can be issued to investigation officer. Hence, the order.

ORDER

01. Application is partly allowed.
02. The investigation officer (PW 31) / P. I. West Deopur Police Station is directed to produce the mobile bill and finance documents of accused No. 11 as prayed in the application, on or before next date without fail.

Dhule

Date : 19/03/2025

(Jayshri R. Pulate)

Additional Sessions Judge, Dhule.

I certify that the contents of this PDF File are word to word as per original Judgment/Order.

Name of the Steno	: Pravin R. Pande
Name of the Court	: Additional Sessions Judge, Dhule
Judgment delivered on	: 19/03/2025
Judgment signed by P.O.	: 19/03/2025

PDF Uploading Date : 19/03/2025
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