



ORDER BELOW EXH. 1
(Passed on 03.11.2025)

1. The matter was posted today for hearing on the point of framing of charge and simultaneously for hearing on the discharge application filed by the accused under Section 227 of the Code of Criminal Procedure, 1973.
2. During the course of hearing today, this Court heard the accused Surendra Gadling in person, and the learned Assistant Public Prosecutor Shri S.U. Kumbhare for the State on both the aforementioned points.
3. The accused Surendra Gadling, appearing in person, raised a serious and substantial objection regarding the nature and quality of evidence placed before this Court in the charge-sheet. His submissions may be summarized as follows:
 - (i) That there is no original record whatsoever before this Court in the charge-sheet and the entire charge-sheet consists only of xerox copies of documents;
 - (ii) That unless the original records are called for and produced before this Court, mere xerox papers cannot and ought not to be relied upon at the stage of framing of charge;

(iii) That the prosecution intends to rely upon certain digital evidence, but the said digital evidence has not been produced on record before this Court;

(iv) That the accused has a fundamental and unqualified right to know each and every piece of evidence which is proposed to be used against him prior to the framing of charge, in consonance with the principles of natural justice and fair trial;

(v) That in view of the aforesaid, the prosecution ought to be directed to bring all the evidence on record before framing of charge;

(vi) That alternatively, if the prosecution fails to produce the original evidence, then the order on the point of charge ought to be passed only on the basis of material actually available on record, and the xerox copies should not be taken into consideration at all.

4. The accused further emphasized that the production of original documents is not a mere procedural formality but a substantive requirement, particularly at the stage of framing of charge, where this Court is required to apply its judicial mind to the evidence on record to

determine whether sufficient grounds exist for proceeding against the accused.

5. In response to the objections raised by the accused, the learned Assistant Public Prosecutor Shri S.U. Kumbhare submitted as follows:

(i) That the original records pertaining to this case are presently with the Hon'ble Special Court constituted under the National Investigation Agency Act, 2008, at Mumbai, in Special Case No. 414/2020;

(ii) That the said records are required in the proceedings pending before the NIA Court and hence could not be produced before this Court at this stage;

(iii) That the prosecution is willing and ready to file a formal application before this Court for summoning and calling for the said original records, including the digital evidence, from the custody of the NIA Court, Mumbai, for the purpose of verification of the xerox copies produced in the charge-sheet;

(iv) That upon receipt of the original records, the same shall be placed before this Court for perusal and consideration at the stage of framing of charge.

6. The learned APP assured this Court that the prosecution has no objection to producing the original evidence and undertook to take necessary steps in this regard expeditiously.
7. I have carefully considered the rival submissions advanced by both sides. The issue that falls for consideration before this Court is whether the framing of charge can proceed on the basis of xerox copies of documents alone, in the absence of original records, or whether the production of original records is necessary and essential at this stage.
8. The law on this aspect is fairly well-settled. The stage of framing of charge is a crucial and significant stage in criminal proceedings. At this stage, the Court is required to apply its judicial mind to the material placed before it and to determine whether there is sufficient ground for proceeding against the accused. This judicial exercise mandates that the Court must have before it authentic, reliable, and admissible material.
9. Section 294 of the Code of Criminal Procedure, 1973, permits the admission of documents by consent without formal proof. However, at the stage of framing of charge,

particularly when the accused has specifically objected to the reliance on xerox copies in the absence of originals, it would not be appropriate for this Court to proceed merely on the basis of photocopies.

10. The Indian Evidence Act, 1872, under Sections 63 to 65, lays down specific provisions regarding primary and secondary evidence. Section 64 categorically provides that documents must be proved by primary evidence, except in cases provided under Section 65. While Section 65 permits the admission of secondary evidence under certain circumstances, the same is subject to the satisfaction of the conditions enumerated therein.
11. In the present case, the prosecution has itself admitted that the original records are in the custody of the NIA Court, Mumbai, and are available for production. Therefore, there is no impediment to the production of original records before this Court. When original records are available and producible, it would be contrary to the principles of best evidence rule to rely on xerox copies.
12. Furthermore, the accused has raised a valid point regarding digital evidence. In the modern age, digital evidence forms a crucial part of prosecution evidence in many cases. The provisions of Section 65B of the Indian

Evidence Act, 1872, as interpreted by the Hon'ble Supreme Court in various judgments including *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal [(2020) 7 SCC 1]* and *Anvar P.V. v. P.K. Basheer [(2014) 10 SCC 473]*, mandate strict compliance with the certificate requirements for admissibility of electronic records. The accused has a right to examine the original digital evidence and to verify its authenticity before the same is relied upon against him.

13. The right of the accused to a fair trial is a constitutional right flowing from Article 21 of the Constitution of India, as repeatedly held by the Hon'ble Supreme Court. This right encompasses the right to be apprised of the evidence sought to be used against him, the right to cross-examine witnesses, and the right to examine documents in their original form when the authenticity of copies is disputed.
14. It is also a relevant consideration that this case has been pending for more than six and a half years, having been instituted in 2019. The prolonged pendency of the case makes it all the more imperative that the proceedings be conducted expeditiously, but at the same time, without compromising on the fundamental rights of the accused or the requirements of law.

15. In the circumstances, this Court is of the considered opinion that it would not be appropriate to proceed with the framing of charge on the basis of xerox copies alone, particularly when the original records are admittedly available with the NIA Court, Mumbai, and the prosecution has expressed its willingness to produce the same.
16. At the same time, considering the age of the case and the need for expeditious disposal, it is necessary to fix a definite time frame within which the prosecution must take necessary steps to secure the production of original records before this Court.
17. The learned Assistant Public Prosecutor has undertaken to move an application for summoning the original records. This Court expects that the prosecution will act with utmost diligence and promptitude in this matter, keeping in view the prolonged pendency of the case and the rights of the accused to speedy trial.
18. It is also necessary to make it clear that if the prosecution fails to produce the original evidence within the time stipulated, this Court will be constrained to proceed with the matter on the basis of such material as

is already available on the charge-sheet, excluding the xerox copies, and pass appropriate orders in accordance with law. In view of the aforesaid discussion and for the reasons recorded above, the following order is passed:

ORDER

(1) The learned Additional Public Prosecutor is directed to bring before this Court all the original evidence, including original documents and digital evidence, which the prosecution proposes to rely upon on or before next date or take all necessary steps on or before next date.

(2) It is made clear that if the prosecution fails to bring the original evidence on record or failed to take necessary steps on or before next date of hearing, this Court will be constrained to pass appropriate orders on the point of framing of charge on the basis of material already available on the charge-sheet, without taking into consideration the xerox copies of documents.

(3) Considering that the matter is more than six and a half years old, it is expected from the learned Special Public Prosecutor/Additional Public Prosecutor to take all necessary steps in this matter expeditiously and on a war footing, so as to ensure that there is no further delay

in the proceedings.

(4) The next date of hearing is fixed, with the consent of both sides, on 17th November, 2025, for further proceedings.

(5) Office is directed to communicate a copy of this order to the learned Additional Public Prosecutor immediately for necessary action.

(6) Copy of this order be sent to the accused free of cost by e-mail through Superintendent of Prison, Talaja.

(7) Order pronounced in open Court.

Aheri.
Date – 03/11/2025.

(Prakash R. Kadam)
Additional Sessions Judge,
Aheri.