

SC/38/2009

ORDER

IN THE CITY SESSIONS COURT AT AHMEDABAD

3

SESSIONS CASE NO. 38 OF 2009.

WITH

SC/418/2009

Complainant:

THE STATE OF GUJARAT
CITY CIVIL AND SESSIONS COURT, BHADRA, AHMEDABAD.
ahmedabad

VERSUS

Accused:

JAHID KUTBUDDIN SHAIKH 25
C/O. POPATLAL, SANDHI AVENUE, OPP. VISHALA HOTEL,
JUHAPURA, AHMEDABAD and Others.

ORDER BELOW EXH.339 IN SESSIONS CASE NO.38 OF 2009.

1 This is an application dated nil-01-2012 submitted by Deputy Superintendent of Central Jail, Ahmedabad requesting to pass necessary orders for the production of accused (1) Kamruddin @ Raja Chandmohammad Nagori (2) Safdar Nagori @ Hussainbhai @ Iqbalbhai S/o. Jahrulhussain Jahiruddin Nagori before the JMFC Court, Ujjain, Madhya Pradesh on 06.02.2012.

2 Facts of the Application.

2.1 It is stated that the accused (1) Kamruddin @ Raja Chandmohammad Nagori (2) Safdar Nagori @ Hussainbhai @ Iqbalbhai S/o. Jahrulhussain Jahiruddin Nagori are at present in the Central Jail, Ahmedabad in Judicial custody in the case No.38/09 (Serial Bomb blast) for the offence punishable under-section 120-B, 121-A, 124-A, 153-A (1)(B), 307, 427, 465, 468, 471 of IPC; Sec. 3, 5, 6, 7 of Explosives Substance Act; Sec.10, 13, 16, 18, 19, 20, 23, 38, 39 of Unlawful Activity Act; Sec.25(1) (B)A, 27 of Arms Act and Sec. 65, 66 of the Information Technology Act.

2.2 The another case bearing Chapter Case No.2154/08, 2154/08 and 4863/08 is pending before the JMFC Court, Ujjain, Madhya Pradesh.

The accused are required to be produced before the said Court on 06-02-2012.

3. A Xerox copy of the production warrant sent by the JMFC Court, Ujjain, Madhya Pradesh is attached with the application which is marked as at Ex. 339/1, 339/2 & 339/3. These are the Xerox Copy of the production warrant U/s. 267 issued by the JMFC Court, Ujjain, Madhya Pradesh, wherein it is stated as under :

“You are hereby required to produce (name of accused) now a prisoner in----under safe and sure conduct before the Court of----- at 11:00 on the 6th day of February 2012, by ---- O' clock in the forenoon of the same day, thereto answer a charge now pending before the said Court and after such charge has been disposed of or the said Court has dispensed with his further attendance cause him to be conveyed under safe and sure conduct back to the said prison”

3.1 On perusing the said warrant, it transpires that (1) the purpose of production of the accused before the JMFC Court, Ujjain, Madhya Pradesh, is not specifically stated (2) the form under-section 37 of the Act 111/1900 for the production warrant is used which is outdated (3) offence charge/alleged is not specifically stated (4) stage of the particular proceedings is not stated.

4 This Court has come across the following Judgment of the Hon'ble Supreme Court wherein Hon'ble Supreme Court has held that the physical presence of accused is not necessary and the trial can be carried out with the help of Video-Conferencing facility.

(A) AIR 2006 SC 2820 "State of Punjab v. M/s. Amritsar Beverages Ltd., wherein it is held...

“13. Section 14 of the Act although has been amended, the problem, in our opinion, should be dealt with keeping in view of the fact that the procedural laws should be construed to be ongoing statutes similar to the Constitution and, thus, creative interpretation according to the circumstances is permitted. The Court in view of development of science has to meet and contend with challenges as an intermediary between the litigant and the court.”

(B) AIR 2005 SC 972 "Kalyan Chandra Sarkar v. Rajesh Ranjan., wherein it is held...

“43.It is true in a normal trial the Criminal Procedure Code requires the accused to be present at the trial but in the peculiar circumstances of this case a procedure will have to be evolved it will not be contrary to the rights given to an accused under the Criminal Procedure Code but at the same time protect the administration of justice. Therefore, as held by this Court in the case of State of Maharashtra v. Dr. Praful B. Desai (2003 (4) SCC 601) and Sakshi v. Union of

India and others (2004 (5) SCC 518), we think the above requirement of the Code could be made by directing the trial by video conferencing facility. In our opinion, this is one of those rare cases wherein a frequent visit from the place of detention to the Court of trial in Bihar would prejudice the security of both the respondent and others involved in the case. Apart from being a heavy burden on the State exchequer.

45. We also direct that the trial of the case in Patna shall continue without the presence of the appellant by the Court dispensing such presence and to the extent possible shall be conducted with the aid of video conferencing."

(C) AIR 2003 SC 2053 "State of Maharashtra v. Praful B. Desai ", wherein it is held...

"12. ...Thus Section 273 provides for dispensation from personal attendance. In such cases evidence can be recorded in the presence of the pleader. The presence of the pleader is thus deemed to be presence of the accused. Thus Section 273 contemplates constructive presence. This shows that actual physical presence is not a must. This indicates that the term "presence", as used in this Section, is not used in the sense of actual physical presence. A plain reading of Section 273 does not support the restrictive meaning sought to be placed by the respondent on the word "presence".

...Thus evidence can be both oral and documentary and electronic records can be produced as evidence. This means that evidence, even in criminal matters, can also be by way of electronic records. This would include video-conferencing.

19. This is not virtual reality, it is actual reality. One is actually seeing and hearing what is happening. Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence. In fact he/she is present before you on a screen. Except for touching one can see, hear and observe as if the party is in the same room. In video conferencing both parties are in presence of each other.

... Thus it is clear that so long as the accused and/or his pleader are present when evidence is recorded by video conferencing that evidence is being recorded in the "presence" of the accused and would thus fully meet the requirements of Section 273, Criminal Procedure Code. Recording of such evidence would be as per "procedure established by law". Recording of evidence by video conferencing also satisfies the object of providing in Section 273, that evidence be recorded in the presence of the accused. The accused and his pleader can see the witness as clearly as if the witness was actually sitting before them. In fact the accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded Court room. They can observe his or her demeanour. In fact the facility to play back would enable better observation of demeanour. They can hear and rehear the deposition of the witness. The accused would be able to instruct his pleader immediately and thus cross-examination of the witness is as effective, if not better. The facility of play back would give an added advantage whilst cross-examining the witness. The

witness can be confronted with documents or other material or statement in the same manner as if he/she was in Court. All these objects would be fully met when evidence is recorded by video conferencing. Thus no prejudice, of whatsoever nature, is caused to the accused."

(D) AIR 2008 SC 942 "Rajesh Ranjan Yadav v. CBI through its Director", wherein it is held...

"Para 7. We accordingly dismiss the application but while doing so issue the following directions

1) Every effort will be made to provide Video Conference Facilities to the appellant but in the light of Sections 273 and 317 of the Cr.P.C, the trial will go on to its conclusion even if they are not available;

2) that in the event that the video conference facilities are available, the appellant would be allowed access to his lawyers through the aforesaid facility in addition for one hour on each day that the final arguments in the trial proceed;"

5. It is stated in the application that the Government of Gujarat had passed order u/s. 268 of the Criminal Procedure Code that in the public interest, the accused 62 in number of the serial bomb blast shall not be removed from the Central Prison, Ahmedabad and name of the present accused are included in the above 62 accused at Serial No.9 and 12.

Considering the contents of the production warrant, notification under 268 of Cr.P.C., facts and circumstances of the case and interest of justice following order is passed :

ORDER

The present application is rejected.

Jail Superintendent, Central Jail, Ahmedabad is directed and ordered to ensure as to what purpose the accused are required to be produced before the *JMFC Court, Ujjain, Madhya Pradesh* and to find out whether the Video Conferencing facility is available at the Court situated at Ujjain, Madhya Pradesh or not. If it is found, the accused be produced through Video Conferencing. The request may be made to the concerned Court accordingly.

Yadi be sent to the Jail Superintendent, Central Jail, Ahmedabad.

Pronounced in the open Court, to-day on 31st January, 2012.

Date : 31/01/2012

(V. P. Patel)
Special Judge,
Designated Court for conducting
Bomb blast cases, Ahmedabad.