

IN THE COURT OF MCOCA SPECIAL JUDGE AT GREATER BOMBAY
(Exclusive Special Court constituted for the cases under
MCOCA/TADA/POTA/NIA AND OTHER SESSIONS CASES

ORDER BELOW EXH.134
IN
NIA CASE No.RC-01/2021/NIA/MUM
IN
NIA SPECIAL CASE NO.1090 OF 2021

National Investigation Agency, Mumbai. Complainant

Versus

Sachin Hindurao Waze & Others Accused persons.

CORAM : HIS HONOUR THE SPECIAL
JUDGE, MCOCA/POTA/TADA/NIA
AND ADDL. SESSIONS JUDGE
SHRI A.M. PATIL.

C.R.NO. : 57.

DATE : 26.04.2023.

SPP Mr.S.D.Gonsalves along with Sr.PP S.K.Sadawarte for
Complainant/ Prosecution.
Sachin Waze in person(accused no.1)
Adv.Sudeep Passbola for accused no.1
Adv.Qureshi for accused no.2.
Adv.Dinesh Tiwari for accused no.3.
Adv.Hassnain Kazi for accused no.4
Adv.Prateek Ingle for accused no.5.
Adv.H.D.Magar for accused no.9.
Adv.Shekhavat for accused no.10.

ORDER

(DICTATED IN OPEN COURT)

1. The present application is filed by NIA through SPP. It is the contention of the NIA that initially this offence was registered by Gaondevi Police station, Mumbai vide Crime No.35/2021. Then it was transferred to DCB,CID. Subsequently, as per the order of Government of Maharashtra, it was transferred to ATS Maharashtra and lastly as per the order of Ministry of Home Affairs, it was transferred to NIA. It also contended that during investigation, NIA found that accused have committed heinous and serious offence and thereby the offence U/s.16 and 18 of the Unlawful Activities (Prevention) Act, 1967 were invoked. It further contended that the investigation has been completed and final report (charge-sheet) was filed on 03.09.2021 before this Court. It further contended that the copy of charge-sheet including statements, documents have been supplied to all the accused and complied with Section 207 of the Criminal Procedure Code. It further contended that the data in the articles shown vide Sr.No.269, 289, 290, 368, 372, 373, 474 and 494 of Annexure-C are voluminous in nature. It would take about 258 days or more to copy the said data and 8 to 9 months would take to supply its copies. It further contended that for copying the said data it would cost around Rs.40 Lakhs and thereby this application is filed to direct that the said data is voluminous electronic data and there is no need to supply it to the defence under the proviso of Section 207(v) of the Cr.P.C.

2. Accused no.1 to 5, 9 and 10 filed their reply in the said application and no say order is passed against accused no.6 to 8. They strongly opposed the application on the ground that the entire case is based on the electronic evidence and to read, study, compare and

preparation, the copy of the electronics evidence is necessary. They further submitted that already this Court has passed order on Exh.81 and directed the prosecution to provide all material including electronics evidence. They further contended that merely because the cost involved in supplying the copies of the electronics data seized during the course of investigation is to the tune of Rs.40 Lakhs it would not be proper to deny the copy of the same to the accused persons for fair trial. This would scuttle, the settled provisions of the law. They further contended that the provision U/s.207(v) of Cr.P.C. is only pertaining to the bulky documents and not for the electronic record. They further contended that it is the duty of Court whether all the documents/materials have been provided to the accused or not. They further contended that the prosecution can deny to supply voluminous documents, but they cannot deny documents on the ground that it would be expensive. Hence, he prayed to reject the application.

3. Heard all the parties and their respective advocates. Admittedly, the electronics record in the present case is voluminous. It is also seen from the statutory provisions contained in Section 207(v) of the Cr.P.C. that there is the provision that any documents is voluminous, then the accused will be allowed to inspect either personally or through his advocate. In the said proviso, the word used "*document*". Now so far as this word is concerned, at the time of argument learned advocate Mr.Sudeep Passbola relied on the judgment of Hon'ble Supreme Court in **P.Gopalkrishnan V/s State of Kerala (2020)9 SCC 161**. He pointed out para no.47. It is reproduced as under:

"47. We are conscious of the fact that Section 207 of the 1973 Code permits withholding of documents(s)

by the Magistrate only if it is voluminous and for no other reason. If it is an "electronic record", certainly the ground predicated in the second proviso in Section 207, of being voluminous, ordinarily, cannot be invoked and will be unavailable. We are also conscious of the dictum in *Supt. & Remembrancer of Legal Affairs V. Satyen Bhowmicks*⁵⁰, wherein this Court has restated the cardinal principle that the accused is entitled to have copies of the statements and documents accompanying the police report, which the prosecution may use against him during the trial."

4. As per the above ratio, it is mandatory for the prosecution to supply all the electronics evidence to the accused. They cannot take the advantage of Section 207(v) of Cr.P.C. In the present case in hand, NIA worked out and came to the conclusion that it would cost Rs.40 Lakhs. To strike the balance, it is also necessary to reproduce para no.48 of the said judgment. It is reproduced as under:

"48. Nevertheless, the Court cannot be oblivious to the nature of offence and the principle underlying the amendment to Section 327 of the 1973 Code, in particular sub-section(2) thereof and insertion of Section 228-A of the 1860 Code, for securing the privacy of the victim and her identity. Thus understood, the Court is obliged to evolve a mechanism to enable the accused to reassure himself about the genuineness and credibility of the contents of the memory card/pen-drive from an independent agency referred to above, so as to effectively defend himself during the trial. Thus, balancing the rights of both parties is imperative, as has been held in *Asha Ranjan*⁴⁷ and *Mazdoor Kisan Shakti Sangathan*⁴⁸. The Court is duty-bound to issue suitable directions. Even the High Court, in exercise of inherent power under Section 482 of the 1973 Code, is competent to issue suitable directions to meet the ends of justice."

5. Upon perusal of the ratio laid down in the para no.48, the Court is duty bound to issue suitable direction to meet the ends of justice. Considering the voluminous nature of the electronics evidence, it would be proper to give direction to the prosecution to supply copy of entire electronics evidence to the concerned accused who has connection with the said electronics evidence. Hence, the following order.

ORDER

1. Application (Exh.134) is partly allowed.
2. Applicant shall provide copy of entire electronics evidence to the concerned accused who has connection with the said electronics evidence.
3. Applicant shall provide the same within three months from the date of order.
4. Application Exh.134 is disposed off.

DATE : 26.04.2023



(A.M. PATIL)
SPECIAL JUDGE
MCOCA/POTA/TADA/NIA
AND ADDL. SESSIONS JUDGE
GREATER MUMBAI.

Dictated and typed on : 26.04.2023.

Signed on : 26.04.2023.

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER"

DATE : 27/04/2023, AT 11.05 A.M.

B.R.HATEKAR
STENOGRAPHER GRADE-I

UPLOAD DATE AND TIME

NAME OF STENOGRAPHER

Name of the Judge (with Court no.) : SHRI A.M. PATIL. C.R.NO.57.

Date of pronouncement of judgment/order : 26.04.2023.

Judgment/order signed by the P.O. on : 26.04.2023.

Judgment/order uploaded on : 27.04.2023