

6.9.2024

All the four accd persons namely Jahangir Ali Mondal, Imran Sheikh @ Raja, Md. Dilnawaz and Mahadeb Nayaban are produced from J.C.

Today is fixed for passing order in respect of the petition dtd 12.8.2024 filed by accd Mahadeb Nayaban.

It is submitted by Ld. Advocate representing the accd Mahadeb Nayaban that I.O has submitted charge sheet in this case U/s. 20(b)(ii)(C)/58(2)/29 NDPS Act and thereafter copies have been supplied to the accd persons. It is further submitted that in the instant case the accd persons have been entangled on the basis of CCTV footage and so copy of CCTV footage is the most important document but I.O did not supply the same to the defence and due to non supply of copy of CCTV footage, the accd persons are in complete dark and in consequence thereof fair trial is not possible. In this facts & circumstances, Ld. Defence counsel by filing the instant petition has prayed for an order directing the prosecution to supply copy of CCTV footage/pen drive as per S.L dtd 6.3.2024 and also copy of CCTV footage/pen drive of Gait Pattern video.

Ld. Defence counsel further submits that some of the copies of the statement of the witnesses are not at all legible and in view of this he prays for supply of legible copies of statement of the witnesses.

Ld. P.P in-charge in course of hearing fairly submits that copy of CCTV footage or cloned copy of pen drive can be supplied to the defence but he strongly opposes the submission of Ld. Defence counsel for supply of cloned copy of pen drive of Gait pattern video. According to Ld. P.P in-charge copy of Forensic Report has been supplied to the accd persons and therefore they are not entitled to get cloned copy of pen drive of Gait Pattern video.

In the instant case the allegation of the prosecution is that on 30.12.2023 in between 15.40 hrs and 16.45 hrs, 1.980 kgs of Charas was seized at Sarat Ghosh Garden Rd opposite of Suresh Manna Mistanna Bhandar, Kol-31 by S.I Sourav Bhattacharya of Kasba P.S which was found to be hanging in a bag at the handle of a motorcycle with Regn. No- WB-06N/5083 and the said motorcycle was parked at Sarat Ghosh Garden Rd opposite of Suresh Manna Mistanna Bhandar, Kol-31. One Avijit Das is the owner of the said motorcycle. Subsequently during investigation after going through a nearby CCTV footage it was found that some unknown persons kept the said bag hanging in the handle of the said motorcycle containing the contraband substance in absence of Avijit Das only with an intention to implicate him in a NDPS case. Later during investigation the accd persons were arrested and charge sheet was submitted against four accd persons.

So considering the aforesaid version of the prosecution, it appears that in this case footage of CCTV, being a crucial evidence, prosecution has relied upon it .

According to Indian Evidence Act 'evidence' includes all documents including electronic records produced for the inspection of the Court.

According to Information Technology Act 'Electronic Record' means data, record or data generated, image or sound stored, received or send in an electronic form or micro film or computer generated micro fiche.

Electronic records covers a wide range of formats in which data can be produced. DVD, CD, Pen drives, Hard drives, E-Mails, Video Recordings, Sound Recordings etc are few of the formats of electronic records.

In P Gopalkrishnan @ Dileep Vs State of Kerala and Another, (2020) 9 SCC 161 the Supreme Court had observed as below:-

“ In conclusion, we hold that the contents of the memory card/pen drive being electronic record must be regarded as a document. If the prosecution is relying on the same, ordinarily, the accd must be give a cloned copy thereof to enable him/her to present an effective defence during the trial. However, in cases involving issues such as of privacy of the complainant/witness or his/her identity, the Court may be justified in providing only inspection thereof to the accd and his/her lawyer or expert for presenting effective defence during the trial. The Court may issue suitable directions to balance the interests of both sides.”

As per prosecution case the accd persons have been entangled in this case on the basis of a CCTV footage and so CCTV footage is definitely a crucial evidence and prosecution has relied upon it. Therefore, considering this aspect and keeping in mind the definition of ‘document’ as per Indian Evidence Act and definition of ‘electronic record’ as per Information and Technology Act and also considering the observation of the Hon’ble Apex Court in the aforesaid judgment, this Court is of view that defence is entitled to get a copy of the CCTV footage (cloned copy of the pen drive) which is a document as per Indian Evidence Act.

Accordingly, prosecution is directed to supply a cloned copy of pen drive of CCTV footage of main entrance of 98, Sarat Ghosh Garden Lane, Kol-700031 to the accd persons.

With regard to the prayer for supply of copy of footage of Gait pattern video, it is found that Gait pattern video was recorded for verifying the video images of the CCTV footage and after recording of the Gait Pattern video, the clippings of the said video along with the CCTV footage were sent to Forensic Department for examination and experts of Forensic Department after examining the same submitted a report. It further appears that the copy of the Forensic Report was supplied to the accd persons . It is clear that Gait video was recorded only for verifying the CCTV images by Forensic Experts.

Thus in view of the aforesaid discussion, this court is of opinion that the accd persons are not entitled to get any copy of Gait pattern video/ cloned copy of the pen drive of Gait pattern video as the same was used for verifying the video images of CCTV footages. Accordingly prayer for supply of copy of Gait pattern video to the accd persons stands rejected.

With regard to the prayer for supply of legible copy of statement of Rabi Jadav, Md. Nurul Huda and Pradip Sardar prosecution is directed to supply the same upon the defence positively on the next date fixed.

Fix 3.10.2024 for consideration of charge and production.

Prosecution is directed to supply the cloned copy of CCTV footage (pen drive) of main entrance of 98, Sarat Ghosh Garden Lane, Kol-700031 and legible copy of statement of the aforesaid witnesses to the accd persons in the mean time.

D/corr by me,

4<sup>th</sup> ASJ, Alipore.

**(J.O.Code-WB00705).**

