

  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Criminal Writ Petition No. 923/2023

Savitri Devi D/o Lt. Bacchana Ram, Aged About 63 Years, R/o  
W.no. 52, Sueashiya, Hanumangarh Junction, Teh. And Dist.  
Hanumangarh (Raj.).

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Ministry Of Road Transport And Highways Transport  
Section, Through Director (Transport), Transport Bhawan,  
1 Parliament Street, New Delhi 110001.
3. Assistant General Manager (Administration), Suratgarh  
Bikaner Toll Road Company Pvt. Ltd., Hindore Toll Plaza,  
Rajiasar, Shri Ganganagar (Raj.).

----Respondents

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| For Petitioner(s) | : | Mr. Rajendra Singh Rathore |
| For Respondent(s) | : | Mr. Sri Ram Choudhary, AGA |

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**HON'BLE MR. JUSTICE FARJAND ALI**

**Order**

**Reportable-**

**25/02/2026**

1. The present petition is filed by the petitioner who is mother of the accused, seeks a series of directions under the provisions of Article 226 of the Constitution of India, to address various grievances regarding the criminal proceedings initiated against her son under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985. The petition raises serious concerns about the false implication of

the petitioner's son and the failure of the respondents to preserve crucial evidence, including the CCTV footage from Hindore Toll Plaza, which the petitioner claims is pivotal to his defense.

2. The petitioner seeks the following reliefs through the instant writ petition:

*a. By an appropriate writ, order or direction respondents may kindly be directed to procure CCTV footage of the Hindor Toll Plaza dated 20.12.2022 from 8:45 am to 1:00 p.m.*

*b. By an appropriate writ, order or direction the present petitioner's son may kindly be discharged from the NDPS charges leveled against him.*

*c. By an appropriate writ, order or direction criminal proceedings initiated against the present petitioner may kindly be dropped.*

*d. By an appropriate writ, order or direction present petitioner's son may be released from the judicial custody.*

*e. By an appropriate writ, order or direction FIR no. 323/2022 Police Station Rajiyasar, District Ganganagar (Rajasthan) may kindly be quashed and set aside.*

### **Brief Facts**

3. The present writ petition has been filed by the petitioner, who is the mother of the accused, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution

of India. The grievance of the petitioner arises out of the criminal proceedings initiated vide FIR No. 323/2022 registered at Police Station Rajiyasar, District Sri Ganganagar for offences under Sections 8, 15, 21 and 25 of the NDPS Act. The petitioner contends that her son has been falsely implicated and that the investigation conducted by the police authorities suffers from serious procedural infirmities. It is the specific case of the petitioner that the alleged interception of the vehicles and the subsequent search and recovery are stated to have taken place at Hindore Toll Plaza on the Bikaner–Suratgarh National Highway on 20.12.2022 between approximately 11:10 A.M. and 7:00 P.M., a place which is admittedly equipped with CCTV surveillance systems.

4. According to the prosecution, the complainant–police officer while patrolling noticed a Swift car and a Bolero Pick-up moving at high speed, chased them on suspicion, and ultimately stopped the vehicles at Hindore Toll Plaza where search was conducted in the presence of alleged independent witnesses. It is alleged that from the Swift car bearing registration No. RJ19CK7868 four plastic bags containing poppy husk weighing 76 Kg in total were recovered. However, the petitioner asserts that no recovery was made from the Bolero vehicle and that the alleged recovery from the Swift car is fabricated. It is further alleged that the incident began with a minor altercation between the police

personnel and the accused after the side mirror of the Swift car was damaged during the chase, which subsequently led to false implication of the petitioner's son. The petitioner emphasizes that her son is 38 years old and has no criminal antecedents.

5. The central grievance raised by the petitioner pertains to the deliberate failure of the investigating agency to secure and preserve the CCTV footage of Hindore Toll Plaza for the relevant period. The petitioner had moved an application before the learned Additional Sessions Judge, Suratgarh on 04.01.2023 under Section 91 Cr.P.C. seeking production of CCTV footage for the period between 8:45 A.M. and 1:00 P.M. on 20.12.2022, which could have conclusively demonstrated the sequence of events. The learned trial court directed the prosecution to produce the said footage; however, despite repeated opportunities and judicial directions, the footage was not produced and ultimately the Toll Plaza authorities reported that the data had been deleted. The petitioner alleges that the prosecution deliberately delayed the production of footage so that the 30-day retention period could lapse, thereby resulting in destruction of the most crucial evidence. Hence, the present writ petition.
6. Heard learned counsels present for the parties and gone through the materials available on record.

### **OBSERVATION OF THE COURT**

7. The Court has given its thoughtful consideration to the submissions advanced on behalf of the petitioner as well as the material placed on record. The issues raised in the present writ petition transcend the ordinary realm of factual disputes and enter into the domain of constitutional guarantees relating to fairness in criminal investigation and trial.
8. At the outset, it must be observed that offences under the NDPS Act are amongst the most stringent offences contemplated in criminal jurisprudence. The statute prescribes severe mandatory punishments and incorporates stringent procedural requirements. The minimum sentence for certain offences may extend to ten years or more, thereby significantly affecting the liberty of an accused person. It is therefore well settled that the prosecution in such cases carries a heavy and rigorous burden of proof and must strictly comply with procedural safeguards prescribed under law.
9. Amongst the various principles governing criminal evidence, the Rule of Best Evidence occupies a foundational position. This principle mandates that when the best available evidence capable of proving a particular fact is accessible to a party, that party is obligated to produce such evidence before the Court. Inferior or secondary evidence cannot

substitute the primary and most reliable evidence when the latter is within the reach of the party relying upon it.

10. The aforesaid principle finds statutory recognition in the scheme of the Indian Evidence Act, 1872, particularly in Sections 61, 62 and 64 which require that the contents of a document must ordinarily be proved by primary evidence, that is, the document itself. The doctrine underlying these provisions is commonly referred to as the Rule of Best Evidence, which mandates that when the most direct and reliable evidence of a fact is available, the same must be produced before the Court. Secondary or inferior forms of proof are permissible only in exceptional circumstances contemplated under Section 65 of the Evidence Act. The object of this rule is to ensure the highest degree of reliability in judicial fact-finding by insisting that the Court be placed in possession of the most authentic material evidence capable of proving the fact in issue.

11. The principle has been consistently recognised in authoritative legal commentary as well. As explained by Sir James Fitzjames Stephen in his treatise *Digest of the Law of Evidence*, the rule is founded upon the logic that “the best available evidence must be produced in order to prevent fraud, mistake, or distortion of facts.” Similarly, leading Indian commentary such as *Ratanlal & Dhirajlal on the Law of Evidence* explains that the rule is designed to exclude weaker evidence when stronger and more reliable evidence

is available. The rationale behind the doctrine is that the administration of justice must rely upon the most direct, authentic and trustworthy form of proof, so that the Court may reach its conclusions upon the clearest possible evidentiary foundation.

12. In the modern context, this doctrine has naturally expanded to include electronic records, which are recognised as documentary evidence under Section 3 of the Evidence Act and are governed by the special provisions contained in Sections 65A and 65B. Consequently, where a fact in issue is capable of being proved through contemporaneous electronic recording such as CCTV surveillance capturing the events in real time, such evidence may constitute the best and most direct evidence of the occurrence.

13. The Hon'ble Supreme Court in ***Mohanlal Shamji Soni v. Union of India (AIR 1991 SC 1346)*** has categorically held that it is a cardinal principle of evidence that the best available evidence must be placed before the Court in order to establish a fact in issue.

14. In criminal trials this principle assumes even greater importance because the presumption of innocence lies in favour of the accused. The prosecution is required to establish guilt beyond reasonable doubt, and not merely on a balance of probabilities. Therefore, where crucial evidence capable of establishing the truth of the prosecution narrative

exists but is withheld or allowed to disappear, the Court cannot ignore such conduct.

15. In the present case, the prosecution narrative itself indicates that the alleged interception, apprehension of the accused, movement of vehicles, their entry into the toll plaza, the search proceedings and subsequent events all occurred within the premises of Hindore Toll Plaza, a place admittedly covered by CCTV surveillance systems. The Ministry of Road Transport and Highways guidelines, placed on record, require toll plazas to maintain CCTV recordings for a stipulated period. Thus, the electronic footage of the relevant period constituted direct and objective evidence capable of depicting the entire sequence of events.

16. Such electronic evidence would have had the capacity to demonstrate:

- the manner in which the vehicles arrived at the toll plaza,
- the presence and movement of police personnel,
- the alleged apprehension of the accused,
- the circumstances under which the vehicles were taken to the administrative office, and
- the conduct of search and seizure operations.

17. Thus, the CCTV footage constituted the most reliable and unbiased evidence regarding the events which formed the very substratum of the prosecution case.

18. In the contemporary era of digital technology, electronic evidence such as CCTV recordings has assumed

extraordinary significance in the administration of criminal justice. Unlike oral testimony, which is dependent upon human perception, memory and narration, electronic recordings capture events as they actually unfold in real time. When such recordings are obtained in accordance with the regular protocol of operation of surveillance systems and are shown to be free from any possibility of tampering, morphing, distortion, corruption or fabrication, they constitute one of the most reliable forms of evidence available to a court of law.

19. Electronic evidence which is produced in accordance with the statutory requirements governing admissibility and which is free from any reasonable suspicion of manipulation can, in appropriate circumstances, represent the best form of evidence available for determining the truth of disputed events. This is because such evidence does not depend upon human recollection or interpretation but rather reflects the events as they actually occurred before the camera. Consequently, when the authenticity of such electronic material is established and the chain of custody is intact, it often possesses a degree of objectivity and reliability which oral or documentary evidence may not always achieve.

20. In many criminal cases, the testimony of witnesses is inevitably influenced by the limitations of human perception and memory. Witnesses may honestly differ in their narration

of events due to lapse of time, stress of the moment, or subjective interpretation of circumstances. Documents, on the other hand, merely record what a person has chosen to write or narrate regarding a particular event. Electronic evidence, particularly CCTV recordings, stands on a distinct footing because it directly captures the occurrence itself. It therefore provides the Court with an opportunity to view the sequence of events in their natural form, thereby enabling a more accurate appreciation of the factual matrix.

21. For this reason, where an occurrence takes place at a location covered by surveillance cameras and the relevant footage is available, such recording may constitute evidence of a higher evidentiary value than oral narration of the same events by witnesses. A witness may describe what he claims to have seen, whereas a CCTV recording depicts what actually transpired before the camera. Therefore, when the electronic record is authentic, untampered and properly preserved, it may serve as the most direct and reliable depiction of the occurrence.

22. The principle underlying the Rule of Best Evidence therefore assumes even greater relevance in cases involving electronic surveillance. If an event has been captured by a functioning CCTV system and such recording is capable of revealing the truth of the matter in dispute, the investigating agency is expected to secure and preserve that recording with utmost

diligence. Failure to do so not only deprives the Court of the most reliable source of information but may also give rise to legitimate doubts regarding the fairness of the investigation.

23. In the present case, the CCTV cameras installed at Hindore Toll Plaza had the potential to capture the movement of the vehicles involved, the presence and actions of the police personnel, the alleged apprehension of the accused, and the subsequent search proceedings. Such footage, if preserved and produced, would have enabled the Court to visually examine the sequence of events instead of merely relying upon the narrative presented by witnesses. In other words, the electronic recording could have served as the most direct and objective evidence regarding the very foundation of the prosecution case.

24. When such potentially decisive evidence is allowed to disappear despite specific judicial directions for its production, the Court cannot ignore the serious implications that arise therefrom. The disappearance of the electronic footage does not merely constitute a procedural lapse; rather, it deprives the Court of the best possible evidence capable of verifying the truth of the allegations. In a criminal prosecution where the liberty of an individual is at stake, such failure assumes profound significance.

25. Under such circumstances, the primary responsibility to collect and produce such evidence rested upon the

investigating agency. The State is not an ordinary litigant driven by private vendetta or adversarial motives; rather, it represents the sovereign authority whose obligation is to ensure that justice is done. Therefore, the investigating officer and the public prosecutor are expected to present before the Court all relevant material, whether favourable or unfavourable, to enable the Court to discover the truth.

26. However, the record of the present case reveals a disturbing sequence of events. The petitioner approached the learned trial court within a short span of approximately fourteen days of the alleged incident and specifically sought production of the CCTV footage by filing an application under Section 91 Cr.P.C. The learned trial court, recognizing the relevance of such evidence, allowed the application and issued directions to produce the footage along with the recording device.

27. Despite such judicial direction, the prosecution repeatedly sought adjournments and failed to produce the footage. Ultimately, the Toll Plaza authorities informed the Court that the data of the relevant date had been deleted. The timing and manner in which such explanation was furnished, particularly after repeated adjournments, creates a legitimate doubt regarding the bona fides of the concerned authorities.

28. It is also noteworthy that when the accused himself expressed willingness to bear the cost of engaging technical experts and requested that the hard disk be sent for forensic

recovery of the data, the prosecution resisted such attempt on the ground of inconvenience and technical difficulty. This conduct assumes significance because ordinarily the prosecution would welcome any effort aimed at strengthening the evidentiary foundation of the case.

29. The situation therefore presents a rather unusual spectacle where the accused was eager to bring the best possible evidence before the Court, while the prosecution appeared reluctant to facilitate its production.

30. In the domain of evidence law, such conduct inevitably attracts the operation of Section 114 of the Indian Evidence Act, 1872, ( section 119 BSA, 2023) particularly Illustration (g) appended thereto. Section 114 of the Indian Evidence Act reads as under:-

*Section 114 of the Evidence Act:*

*The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*

*Illustrations*

*The Court may presume --*

(a) .....

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

*(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;*

31. Section 114 empowers the Court to draw presumptions based on the natural course of human conduct and common experience. Illustration (g) specifically provides that the Court may presume that evidence which could be produced and is not produced would, if produced, be unfavourable to the person who withholds it.

32. The principle underlying this provision is based on ordinary human behaviour. When a party deliberately withholds the best available evidence within its control, the Court is justified in drawing an inference that the evidence would not have supported that party's case. Such presumption is particularly compelling when the evidence is not merely incidental but goes to the root of the controversy.

33. Applying this principle to the facts of the present case, the following circumstances emerge:

First, the prosecution was aware from the very inception that the alleged incident occurred at a toll plaza equipped with surveillance cameras.

Second, the petitioner specifically demanded production of the footage within the period during which such data was ordinarily preserved.

Third, the learned trial court passed explicit directions to produce the footage.

Fourth, despite such directions, the authorities delayed the matter and ultimately reported that the footage had been deleted.

Fifth, even the alternative request made by the accused to recover the data through technical experts was not meaningfully facilitated.

34. These circumstances cumulatively provide sufficient basis for invoking the presumption contemplated under Section 114(g) of the Evidence Act. The failure to preserve and produce such crucial electronic evidence strikes at the very root of fair investigation, which forms an integral part of the guarantee of life and personal liberty under Article 21 of the Constitution of India. The criminal justice system cannot permit investigative agencies to suppress or destroy evidence which could potentially exonerate an accused person.

35. It must be emphasized that the legitimacy of criminal prosecution rests not merely upon the authority of the State but upon the fairness and transparency of the investigative process. When the investigative machinery allows the most material evidence to disappear, the Court cannot remain oblivious to the consequences of such lapse.

36. When prosecution fails to produce the best evidence available in its possession, the benefit of doubt must necessarily accrue to the accused. The greater the severity of punishment prescribed by the statute, the greater is the

degree of caution required in evaluating the prosecution case.

37. In the present matter, the alleged recovery pertains to offences under the NDPS Act which carry severe statutory punishments. Therefore, the standard of proof required from the prosecution is correspondingly stringent. The absence of the most reliable evidence, coupled with circumstances suggesting deliberate non-production, seriously undermines the credibility of the prosecution narrative.

38. The Court is therefore compelled to observe that the conduct of the investigating agency in failing to secure and produce the CCTV footage has materially prejudiced the defence of the accused and has resulted in a situation where the truth of the prosecution story cannot be satisfactorily verified.

### **ORDER**

39. In light of the foregoing discussion and having regard to the principles governing criminal jurisprudence, the Court is of the considered opinion that the non-production and apparent destruction of the CCTV footage of Hindore Toll Plaza constitutes suppression of the best available evidence and attracts the presumption contemplated under Section 114(g) of the Evidence Act, 1872 (Section 119 BSA, 2023) .

40. Such suppression assumes grave significance in a prosecution under the NDPS Act where the entire case rests upon the alleged interception and recovery at a location which was admittedly under electronic surveillance.

41. Accordingly, while refraining from entering into a detailed examination of disputed facts which may fall within the domain of the trial court, this Court deems it appropriate to hold that the failure of the respondents to preserve and produce the most material electronic evidence has seriously compromised the fairness of the investigation and casts a substantial shadow upon the prosecution case.

42. It is, however, necessary to clarify that this Court is not adjudicating upon the merits of the criminal case nor expressing any final opinion regarding the guilt or innocence of the accused. The criminal trial is presently pending before the learned trial court, which alone is the competent forum to appreciate the evidence led by the parties and to determine whether the prosecution has been able to establish the charges beyond reasonable doubt in accordance with law.

43. The observations recorded herein are confined to the limited issue relating to the non-production and apparent disappearance of the CCTV footage which, as discussed above, constituted the most direct and reliable evidence regarding the occurrence in question. The ultimate evaluation of the entire evidence on record remains within the exclusive domain of the learned trial court.

44. Nevertheless, in view of the circumstances noticed hereinabove, it is expected that the learned trial court, while

appreciating the evidence and deciding the case on its merits, shall duly consider the legal consequences flowing from the non-production of such crucial electronic evidence.

45. It is clarified that the learned trial court shall remain fully competent and uninfluenced to appreciate all the evidence that may be led by the parties during the course of trial. However, in view of the admitted fact that the most material electronic evidence namely, the CCTV footage of Hindore Toll Plaza was not preserved or produced despite timely demand and explicit judicial directions, the trial court shall mandatorily take note of this lapse and apply the principle embodied in Section 114 Illustration (g) of the Indian Evidence Act, 1872 (Section 119 of the Bharatiya Sakshya Adhiniyam, 2023).

46. Accordingly, the present writ petition stands disposed of with the observations recorded hereinabove. While deciding the case on its merits, the learned trial court shall draw the necessary adverse inference that the electronic evidence which was admittedly within the control of the prosecution and could have been produced, but was withheld or allowed to be deleted, would, if produced have been unfavourable to the prosecution. This adverse presumption shall form an integral part of the trial court's evaluation of the prosecution case in the light of the rule of best evidence and the cumulative circumstances noted hereinabove.



47. All pending applications, if any, stand disposed of accordingly.

**(FARJAND ALI),J**

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