



**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.88 OF 2025**

Shri. Surajit Ganguly,
Son of Nitya Nanda Ganguly,
Aged 45 years, Indian National, Married,
R/o. 17/7, 5th Cross, Shankarpuram Basvangudi,
Bangaluru Karnataka.

..Petitioner

Versus

1. State of Goa,
Through, The Public Prosecutor,
High Court Porvorim, Goa.

2. Police Inspector,
Through Incharge of
Mapusa Police Station,
Mapusa Bardez, Goa.

.Respondents

3. Shri. X.
Indian National, Married, Major of Age
R/o. H. No.142/3/A, Railpark, Morepukur, Serampor,
Uttar para, Rishra, Hoogly, West Bengal 712250.
(Original Complainant/respondent)

...

Mr. R. J. Pinto, Advocate for Petitioner.

Mr. S. G. Bhobe, Public Prosecutor for Respondent Nos.1 and 2.

Mr. Salil Lawande, Advocate for Respondent No.3.

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 20th AUGUST, 2026.

PRONOUNCED ON : 30th SEPTEMBER, 2026.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties,
matter is heard finally at admission stage.

2. The petitioner impugns communication/order dated 02.05.2022
passed by Children's Court, Panaji Goa, whereby petitioner is refused

clone copy of electronic record relied in charge-sheet and Investigating Officer is directed to supply data as per para 4 of Exhibit D-7, except gallery of photographs and videos and only allowed petitioner to view same in Court premises, under pretext of protection of privacy of victim and prevent misuse.

3. On complaint made by father of victim girl for criminally trespassing in house of victim, molesting her by touching private part and threatening of dire consequences, petitioner was arrested and charged for offences punishable under Section 451, 354, 376, 506(ii) of Indian Penal Code r/w Section 8 of Goa Children's Act, 2003 and Sections 6 and 8 of Protection of Children from Sexual Offences Act, 2012 (hereafter referred to as 'POCSO Act'). After completion of investigation, charge-sheet/final report is filed against petitioner for aforesaid offences, which contains electronic evidence.

4. On 09.12.2019, petitioner filed an application under Section 207 of Code of Criminal Procedure (hereinafter referred as 'Cr.P.C') for supply of clone/copy or mirror image of Input storage data (inclusive of built-in memory as well as external memory card) of mobile phone referred at Exhibit-II of charge-sheet/final report and other illegible documents. On 27.10.2021, Investigating Officer filed reply offering cloned copy. Accordingly, on 14.12.2021 order was passed below Exhibit D-21 directing Investigating Officer to bring laptop and CD,

make a copy and hand it over to accused in presence of Public Prosecutor and Advocate of accused. However, on 02.05.2022 Successor Judge issued letter to Investigating Officer to provide data except gallery of photographs and videos and permit petitioner or his Advocate to view same in Court premises, so as to protect privacy and misuse. Eventually, nullified order dated 14.12.2021.

5. Mr. R. J. Pinto, learned Advocate appearing for petitioner submits that prosecution proposes to rely upon retrieved data of attached mobile phone containing videos, however, petitioner/accused is denied forensic clone/mirror image of electronic device, thereby depriving opportunity to examine authenticity and reliability of electronic evidence that caused great prejudice to defence. Section 173 of Cr.P.C. requires Investigating Officer to supply all documents mentioned in charge-sheet, so as to ensure accused understands basis of prosecution. Section 207 of Cr.P.C. mandates to furnish free of cost copies to accused including documents relied upon by prosecution. A refusal to provide forensic clone of electronic device would frustrate petitioner's statutory as well as Constitutional right guaranteed under Article 21. Reliance of Trial Court on observations of Supreme Court in case of *P. Gopalkrishnan Vs. State of Kerala and Ors.*¹ is misplaced. The High Court of Rajasthan in case of *Harkesh Meena Vs. State of Rajasthan (S. B. Criminal Miscellaneous (Petition) No.2848/2024* decided on

¹ (2020) 9 SCC 161.

04.07.2025), distinguished and explained mandate espoused in case of *P. Gopalkrishnan* (supra) and reinstated need to provide copies of every piece of evidence to accused in same form, in which it has been relied upon by prosecution, so that accused may not be deprived of his right of fair trial and effective details. It is further submitted that merely by providing limited access under supervision of Court and within restricted time would defeat petitioner's right. The interest of prosecution can be protected by providing basic security measures, password protection by adding layer of control over who can access contents.

6. Per contra, Mr. S. G. Bhohe, learned Public Prosecutor for respondent nos.1 and 2 and Mr. Salil Lawande, learned Advocate appearing for respondent no.3 supports impugned order. They submit that in present case right of accused is taken due care by balancing right of privacy of victim, in light of guidelines laid down by Supreme Court in case of *P. Gopalkrishnan* (supra).

7. Undisputedly, prosecution wish to rely upon input storage data containing videos recorded from seized mobile phone. The petitioner claims forensic clone/mirror image of electronic device as petitioner wish to examine authenticity, integrity and reliability of electronic evidence relied by prosecution. It is trite that, accused has right to claim copies of documents or request Court for production of documents,

which is part of charge-sheet and provide him chance of fair defence. The tape records of speeches and audio/video cassettes including Compact Disk are regarded as documents within meaning of Section 3 of Act of 1872, which stands on no different footing than photographs. Such electronic record produced for inspection of Court is documentary evidence. Since Criminal Procedure Code is on going statute, Courts are required to adopt construction with continuous updation compatible with contemporary situation.

8. In case of ***P. Gopalkrishnan*** (supra) Supreme Court observed that electronic record is not confined to “data” alone, but it also means record or data generated, received or sent in electronic form. The expression “data” includes a representation of information, knowledge and facts, which is either intended to be processed, is being processed or has been processed in a computer system or computer network or stored internally in the memory of computer. Eventually, documentary evidence would include all documents including electronic records produced for inspection of Court subject to requirement under Section 65B of Act of 1872. In this background, all documents including electronic record produced for inspection of Court alongwith police report on which prosecution proposes to use against accused needs to be furnished to accused as per mandate of Section 207 of 1973 Code. The contents of memory card/pen-drive normally needs to be furnished to

accused in form of cloned copy. Non-supply of same would impinge upon statutory mandate contained in the 1973 Code and right of accused to fair trial in terms of Article 21 of Constitution of India.

9. In light of aforesaid exposition of law, it will have to be examined as to whether petitioner could have been provided clone copy of mobile phone, memory card relied upon by prosecution containing photographs and videos in respect of incident, particularly keeping in mind right of privacy available to victim.

10. Mr. Pinto, learned Advocate appearing for petitioner heavily relied upon observations of High Court of Rajasthan in case of ***Harkesh Meena*** (supra), wherein High Court of Rajasthan considered issue of right of accused to receive clone copy of memory card used for audio recording in terms of Section 207 of Code of Criminal Procedure, particularly in reference to law laid down by Supreme Court in case of ***P. Gopalkrishnan*** (supra) and observed that accused is entitled for copies of every piece of evidence in same form, in which it has been relied upon by prosecution, so that accused may not be deprived of his right to prepare his defence in an effective manner. Eventually, it was directed to prosecution to provide clone copy of micro SD card to accused/petitioner. Similarly, reliance is placed on observations of Karnataka High Court in case of ***Sri. Chirag R. Mehta Vs. The State of Karnataka***², wherein directions were given to supply documents

appended to charge-sheet in tune with judgment in case of **P. Gopalkrishnan** (supra)

11. This Court finds that petitioner cannot draw much advantage from observations of High Court of Rajasthan in case of **Harkesh Meena** (supra), which is pertaining to prosecution under Prevention of Corruption Act, 1988 and issue as to supply of clone copy of memory card, whereby some communication has been recorded. In that case, there was no issue of privacy of victim. Therefore, matter was decided in reference to right of accused in terms of Section 207 of Code of Criminal Procedure r/w. Article 21 of Constitution of India and directions were given to supply clone copy of original Micro SD Card, so that accused can satisfy himself about genuineness and credibility of contents thereof, which was treated as document in electronic form. Similarly, in case of **Sri. Chirag R. Mehta** (supra) issue was as to furnishing copy of documents enclosed with charge-sheet, which were not produced before Court.

12. In present case, right of petitioner under Section 207 of Code of Criminal Procedure as well as his right to fair trial needs to be balanced keeping in mind right of privacy available to victim. If gallery of photographs and videos in respect of incident in question is supplied to accused in clone copy, possibility of its misuse mitigating privacy of victim cannot be ruled out. Although it has been submitted on behalf of

petitioner that dignity of victim can be protected by adopting appropriate safeguards by furnishing password protected clone copy of electronic record to petitioner and his Advocate with prohibition of publication and transmission. However, this Court finds such safeguards would not be enough with advent of technology and easy availability of tools to break through security measures. The Courts cannot compromise on protection of privacy of victim when petitioner's right to fair trial can be balanced through other mode.

13. In such cases, Court may provide inspection of document to accused or his Advocate or any expert of his choice. In case of *P. Gopalkrishnan* (supra) in similar backdrop Supreme Court observed that safeguards/conditions like imposing watermarks on retrieved clone copy or security seals may not rule out possibility of misuse with advancement of technology and mould relief by permitting appellant to seek second expert opinion from an independent agency such as Central Forensic Science Laboratory (CFSL) on all matters, which appellant may be advised or he can formulate queries with help of expert of his choice for being posed to state agency. The forensic report prepared by CFSL/Agency, after analyzing cloned copy of subject memory card/pen-drive, can be kept confidential by not allowing access to any one other than agency or accused or his authorized representative until conclusion of the trial.

14. This Court finds, since petitioner or his Advocates are not experts, they will have to formulate questions with help of expert to be answered by Science Laboratory/Expert Agency, preferably owned or controlled by Government. In that view of matter, in present case same course can be followed as indicated in case of *P. Gopalkrishnan* (supra). In light of aforesaid exposition of law, impugned order needs to be appropriately modified by partly allowing Writ Petition. Hence, following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The petitioner is permitted to seek second expert opinion from independent agency, such as Central Forensic Science Laboratory (CFSL) on specific queries, which can be formulated by petitioner with help of expert of his choice.
- c. The petitioner, his Advocate and expert be allowed access to electronic evidence relied upon by prosecution within Court premises for purpose of formulating queries. The queries formulated by petitioner with assistance of expert, alongwith clone copy of electronic data/document be forwarded to reputed forensic expert like Central/State Forensic Science Laboratory for analysis and same shall be returned to Court alongwith laboratory report.

- d. The petitioner shall have access to electronic record relied by prosecution within Court premises as directed by Sessions Court under impugned order in supervision of Court Officer.
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/September-2026