

2025 LiveLaw (SC) 451

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ABHAY S. OKA; J., UJJAL BHUYAN; J.**

April 04, 2025

CRIMINAL APPEAL NOS.1786-1787 OF 2025

(Arising out of S.L.P.(Criminal) Nos.5526-5527 of 2023)

CENTRAL BUREAU OF INVESTIGATION *versus* MOHD. YASIN MALIK & ORS.

Criminal Trial - Supreme Court rules against physical production of accused in Jammu Court for trial in 1989 IAF officials' assassination and kidnapping cases, citing security concerns and a Central Government order restricting movement. Accused permitted to cross-examine witnesses via video conferencing from Tihar Jail, as facilities are available under BNSS Section 530 and High Court guidelines. Trial court's order for physical production set aside; no observations made on case merits.

For Petitioner(s): Mr. Tushar Mehta, Solicitor General Mr. Suryaprakash V Raju, A.S.G. Mr. Mukesh Kumar Maroria, AOR Ms. Srishti Mishra, Adv. Mr. Anirudh Bhat, Adv. Mr. Udai Khanna, Adv. Mr. Rajat Nair, Adv. Mr. Annam Venkatesh, Adv.

For Respondent(s): Mr. M. A. Goni, Sr. Adv. Mr. Syed Mehdi Imam, AOR Mr. Atif Suhrawardy, Adv. Mr. Tashriq Ahmad, Adv. Ms. Saltanat Goni, Adv. Mr. Abdur Rahman Mallick, Adv. Mr. Sahil Tagotra, AOR Mr. Sujay Jain, Adv.

ORDER

Leave granted.

2. We have heard the learned Solicitor General of India appearing for the appellant-CBI and the learned counsel representing the accused. We have heard the first respondent appearing in person on video conference.

3. The respondents are being tried for the offences punishable under Section 120-B read with Section 302/307 of the Ranbir Penal Code of the Jammu and Kashmir read with Sections 3(2), 3(3) and 4(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 and Section 27 of the Arms Act, 1959. The challenge in these appeals is to the order dated 20th September, 2022 passed by the learned 3rd Additional Sessions Judge, Jammu (TADA/POTA).

4. The limited question which we are examining is whether it is necessary to procure the personal presence of the first respondent before the Trial Court at Jammu to enable him to conduct the cross-examination of the prosecution witnesses.

5. In the order dated 20th January, 2025, we have noted the observations made by the learned Trial Judge that the video conference system in his Court is not functioning properly. Therefore, we directed the Registrar General of the High Court of Jammu and Kashmir to look into what is stated by the learned Judge and take immediate steps for installing proper video conference system through which hearing can be properly and seamlessly conducted. This Court also passed an order directing the Registrar, In-charge of Information Technology/Computers of the High Court of Delhi to visit the facility in the Tihar Jail with a view to find out whether the available video conference facility is good enough to enable the first respondent to cross-examine the witnesses in the trial which is being conducted in a Court in Jammu.

6. In terms of the directions issued by this Court, now reports have been submitted. Shri Rakesh Singhal, Superintendent of Tihar Prison has submitted a report regarding the

availability of proper facilities for conducting hearing of the criminal trial through video conference. There is also a report submitted by the Registrar General of the High Court of Jammu and Kashmir and Ladakh. In paragraph 8 of the said report, it is stated thus:

“8. In view of the position as explained above, the video conferencing system installed in the designated Court has now been tested to be functioning fully well, In fact the reports of the Ld. Principal District & Sessions Judge, Jammu, Registrar Computers (IT) and Presiding Officer, 3rd Additional District and Sessions Judge (TADA/POTA) Jammu, also make it clear that the Video Conferencing System installed in the designated Court is fully equipped with a robust VC facility along with a complete Audio solution, as well as a Document Visualizer to showcase the documents, and is entirely capable of hearing any matter on the VC facility including examining any witness or cross-examining witness from any far end seamlessly.”

7. We have also perused the report submitted by the Registrar, IT of the Delhi High Court regarding the facilities of video conference available in the Tihar Jail. He has noted that he himself has tested the video conference facilities from Central Jail No.7, Tihar through the zoom testing link of the Trial Court in Jammu where the Registrar, Computer/IT, High Court of Jammu and Kashmir and Ladakh was present. He has also noted that an information was provided by the Superintendent of Prison, Central Jail No.7, Tihar that the first respondent has appeared in different Courts in Delhi and Jammu and Kashmir in some other cases through aforementioned video conference facility. He has annexed a report submitted by the Superintendent of Police, Central Jail No.7, Tihar.

8. Our attention is invited to the order dated 11th December, 2024 passed by the Central Government under sub-Section (1) of Section 303 of Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, “the BNSS”) read with sub-Section (3) of Section 43 (d) of Unlawful Activities (Prevention) Act, 1967 and has extended the restriction on movement of the first respondent outside the Tihar Jail and the National Capital Territory of Delhi for a further period of one year. The Superintendent of Prison has mentioned in the report that that is how the first respondent is being produced before the Trial Court in Jammu via video conference.

9. The first respondent has made submissions through video conference. He has invited our attention to the assertions made by the appellant which contain allegations against the first respondent.

10. We have made it very clear to the first respondent that it is not necessary for us to go into any allegations against the first respondent especially when the Trial Court is seized of the matter. As the prohibitory order is in operation, it will not be appropriate to move the first respondent out of Tihar Jail.

11. From the reports which we have referred above, it is apparent that proper video conference facilities are in existence both in the Tihar Jail and in the Trial Court, Jammu.

12. In view of Section 530 of the BNSS, it is permissible to record examination of witnesses in trials by electronic mode by use of electronic communication or audio-video electronic means. Apart from that, the High Court of Jammu and Kashmir has issued a Notification No.1282 dated 11th February, 2020 laying down the “Guidelines for the conduct of Court Proceedings between Courts and Remote Sites and the VC facilities set up at other places”. The Guidelines and in particular clause 1.4 provide that video conference facilities can be used in all matters including remands, bail applications and in civil and criminal trials where a witness is located intrastate, interstate or overseas. The only exception is that the guidelines will not apply for recording of statements under Section 164 of the Code of Criminal Procedure, 1973. Elaborate guidelines have been laid down in the said Notification starting with preparatory arrangements for video conference.

13. In view of the discussion made above, by modifying the impugned order, we direct that the cross-examination of the prosecution witnesses by the first respondent in pending cases bearing Nos. Case Challan/5007/1990 of RCI (8) 1990-SIU-V-REG and Case Challan/5008/1990 of RC7(S)/90-SIU-V shall be recorded by way of video conference facilities through Tihar Jail.
14. Needless to add that the Trial Court will take all precautions and follow the Guidelines laid down in Notification dated 11th February, 2020.
15. We make it also clear that in case the learned trial Judge entertains a doubt whether the video conference facility is working properly, he shall stop recording of evidence and ensure that the video conference facility is functioning properly.
16. We made a query to the first respondent whether he desires to engage any advocate, he states that he does not desire to appoint any advocate.
17. This statement made by the first respondent will not preclude the first respondent from engaging an advocate. Even if an advocate is engaged by him, the presence of the first respondent can be always procured through video conference.
18. We make it clear that we have made no adjudication on the prosecution case or prosecution allegations against the first respondent or any other accused.
19. The appeals are partly allowed on the above terms.

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