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VIDEO EVIDENCE IN CRIMINAL TRIALS: A CASE COMMENTARY ON *KAILASH V. STATE OF MAHARASHTRA*

— Irine Elsa Cherian

I. Introduction

For nearly two decades, Indian courts confronted electronic evidence primarily as a question of admissibility, whether a certificate accompanied the record, and whether that certificate satisfied the statutory formula. The Supreme Court's decision in *Kailash s/o Bajirao Pawar v. State of Maharashtra*[1] shifts the inquiry one step further: once a video record clears the admissibility threshold, how may a court actually use it? The Bombay High Court had ordered a retrial on the premise that video evidence acquires probative value only when replayed before, and narrated by, a witness in the box. The Supreme Court's reversal of that premise carries consequences well beyond the narcotics prosecution in which it arose, touching the evidentiary status of CCTV footage, body-camera recordings, and digital communications across the criminal docket. This commentary examines the Court's reasoning, situates it within the trajectory from *Navjot Sandhu*[2] through *Arjun Panditrao Khotkar*[3], and assesses what the ruling leaves unresolved for the emerging Bharatiya Sakshya Adhiniyam regime.

II. Background of the Dispute

The prosecution arose from a search and seizure operation under the Narcotic Drugs and Psychotropic Substances Act, 1985, in which approximately 147 kilograms of ganja were recovered from several locations. The entire raid was videographed, and the videographer furnished a certificate under Section 65B(4) of the Evidence Act authenticating the recording.[4] The trial court convicted two accused, treating the video as corroborative of the panch

[1] Kailash s/o Bajirao Pawar v. State of Maharashtra, 2025 INSC 1117 (Sept. 15, 2025) (Criminal Appeal No. 4041 of 2025, arising out of SLP (Crl.) No. 4646 of 2025).
[2] State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 S.C.C. 600 (India).
[3] Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 S.C.C. 1 (India).
[4] The Indian Evidence Act, No. 1 of 1872, §§ 65A, 65B, India Code.

witnesses' testimony. On appeal, the Bombay High Court (Nagpur Bench) set aside the conviction and ordered a retrial, holding that the video could not be appreciated unless played during a witness's deposition and reduced to a narrated transcript, and separately faulting the prosecution for not examining the Chemical Analyser and for not producing the bulk contraband at trial.[5] The State's appeal placed before the Supreme Court both the evidentiary question and the propriety of a retrial ordered to cure what were, in substance, prosecutorial choices rather than jurisdictional or procedural infirmities.

III. Issues before the Court

The appeal required the Court to resolve, principally: (1) whether a video recording authenticated under Section 65B(4) requires additional testimonial conversion, through contemporaneous playback and transcription, before a court may rely upon it; (2) whether non-examination of the Chemical Analyser, whose report is otherwise admissible under Section 293 of the Code of Criminal Procedure, vitiates a conviction; (3) whether non-production of the bulk seized contraband is fatal where Section 52-A NDPS Act procedures have been substantially complied with; and (4) whether the evidentiary gaps identified by the High Court justified a retrial rather than disposal through the appellate court's own powers under Section 391 of the Code of Criminal Procedure.

IV. Arguments

The State argued that the High Court had judicially engrafted a transcription requirement nowhere found in Section 65B, and that a retrial ordered on this footing would give the prosecution an undeserved second opportunity to lead evidence it had, in fact, already led adequately. The accused defended the High Court's order, contending that a video recording, unaccompanied by witness narration identifying persons, locations and sequence, leaves the trier of fact to draw inferences without evidentiary anchoring, and that the absence of the Chemical Analyser's oral testimony and of the seized contraband itself deprived the defence of a meaningful opportunity to test the prosecution case.

V. Judgment

The Court held that a certified video record functions as documentary evidence in its own right: once Section 65B is satisfied, the recording 'becomes an admissible piece of evidence, like a

[5]Kailash, 2025 INSC 1117, ¶¶ 18-20 (extracting and rejecting the Bombay High Court's reasoning that video evidence requires contemporaneous playback and transcription during deposition).

document,' whose contents 'can be seen and heard' to enable the court to draw its own inferences.[6] It rejected the notion that admissibility is conditioned upon transcription or narration, while allowing that an explanatory statement may occasionally assist appreciation of a particular recording, depending on the facts of the case, a matter for judicial discretion rather than a fixed rule.[7] On the Chemical Analyser's report, the Court reaffirmed that Section 293 CrPC dispenses with mandatory oral proof of government scientific reports, leaving summons for oral examination to the court's discretion.[8] On contraband production, it held that non-production is not fatal where Section 52-A safeguards, inventory, sampling, and magisterial certification, have been observed and a reliable FSL report exists.[9] Finally, invoking *Ukha Kolhe*[10] and *Nasib Singh*[11], the Court confined retrial to jurisdictional absence, grave procedural illegality, or genuine prosecutorial disability, holding that retrials are not a mechanism to remedy evidentiary choices the prosecution 'could, but has not cared to' make,[12] and that appellate courts should instead resort to their evidence-taking powers under Section 391 CrPC.[13] The conviction was restored.

VI. Critical Analysis

The judgment's principal contribution lies in disentangling authentication from appreciation. Sections 65A and 65B, as construed in *Anvar*[14] and refined in *Arjun Panditrao Khotkar*[15], establish the gateway conditions for an electronic record to enter the trial; they say nothing about the mode by which a court, once the record is in, must draw conclusions from it. By treating video content as directly perceptible documentary matter, to be seen and heard by the court rather than mediated through a witness's oral gloss, *Kailash* restores to judges an evaluative function that the High Court's approach had effectively delegated to witnesses. This is doctrinally sound: Section 3 of the Evidence Act already treats a document's contents as something a court may examine directly, and there is no textual warrant in Section 65B for a heightened, transcription-dependent standard applicable only to audio-visual records.

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[6]Id. ¶ 21.
[7]Id. ¶ 22.
[8]Code of Criminal Procedure, No. 2 of 1974, § 293, India Code.
[9]Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 52A, India Code.
[10]Ukha Kolhe v. State of Maharashtra, A.I.R. 1963 S.C. 1531 (India).
[11]Nasib Singh v. State of Punjab, (2022) 2 S.C.C. 89 (India).
[12]Kailash, 2025 INSC 1117, ¶ 31.
[13]Code of Criminal Procedure, No. 2 of 1974, § 391, India Code.
[14]Anvar, (2014) 10 S.C.C. 473, ¶ 24 (holding §§ 65A-65B a complete code that excludes recourse to §§ 63 and 65).
[15]Arjun Panditrao, (2020) 7 S.C.C. 1, ¶ 72 (mandating a § 65B(4) certificate save where the original device itself is tendered as primary evidence).

That said, the Court's discretion-based caveat, that an explanatory statement 'may be needed' depending on the facts, leaves the operative standard imprecise. Trial courts now confront ambiguity over when explanatory testimony becomes necessary rather than optional, particularly with long or technically dense recordings such as raw CCTV footage spanning several cameras, or forensic voice samples requiring specialised interpretation. The comparable position in the United States, where Federal Rule of Evidence 901 permits authentication through a witness with knowledge without mandating transcription,[16] and the English approach in *R v. Maqsud Ali*[17], treating recordings as real evidence assessable by the tribunal of fact, suggest that courts elsewhere have long tolerated this ambiguity by relying on case management and cross-examination rather than categorical rules. *Kailash* moves Indian practice in that direction but does not articulate the triggering criteria with the precision that trial-level uniformity requires.

A further point of tension concerns procedural fairness. The Court's insistence that retrial is not available to cure prosecutorial lapses is a welcome corrective against double jeopardy-adjacent hardship for accused persons, yet it sits uneasily beside the accused's separate, and by now well-established, entitlement to a cloned copy of electronic material the prosecution relies upon.[18] A regime that treats video as self-speaking documentary evidence, examinable by the court without narrative mediation, arguably heightens, rather than diminishes, the importance of the defence receiving usable copies well before trial, since the accused's opportunity to contest the video's content depends on being able to independently analyse it, including through forensic examination of metadata and continuity. The judgment does not engage this dimension, leaving a doctrinal seam between admissibility-stage transparency and appreciation-stage autonomy for the court.

The ruling also arrives just as the evidentiary architecture itself is being rebuilt. Section 63(4) of the Bharatiya Sakshya Adhiniyam, 2023 layers a dual-signatory certificate, from the person in charge of the device and from a notified expert, together with hash-value verification, onto the certification model Section 65B popularised.[19] Kailash's holding on appreciation should, in principle, survive this transition unaffected, since it concerns use rather than authentication;

[16]Federal Rules of Evidence r. 901(b)(1) (U.S.) (authentication by testimony of a witness with knowledge, without demanding verbatim transcription).
[17]R v. Maqsud Ali, [1966] 1 Q.B. 688 (Eng.) (tape recordings admissible as real evidence, to be assessed by the tribunal of fact directly).
[18]See P. Gopalkrishnan v. State of Kerala, (2020) 9 S.C.C. 161, ¶ 44 (India) (recognising a qualified right of the accused to a cloned copy of electronic material relied upon by the prosecution).
[19]The Bharatiya Sakshya Adhiniyam, No. 47 of 2023, § 63(4) & sched., India Code.

but the heavier authentication burden under the new Schedule makes it more, not less, important that courts resist reintroducing transcription-style formalism at the appreciation stage merely because certification has become more elaborate.

VII. Comparative Perspective

Both the American and English positions noted above converge on treating audio-visual material as real evidence assessed directly by the fact-finder, with authentication and weight kept analytically separate. Indian law's slower convergence toward this position reflects a distinct institutional anxiety, evident since the Law Commission's 185th Report[20], that electronic records are unusually susceptible to fabrication, which historically pushed courts toward layered procedural safeguards. *Kailash* signals that this anxiety, legitimate as it is, is better addressed through rigorous authentication (Section 65B, and now Section 63 BSA) than through appreciation-stage formalism that borrows the language of viva voce evidence.

VIII. Future Implications

For trial courts, the judgment should reduce the incidence of retrial orders grounded in mere evidentiary preference and encourage fuller use of appellate fact-finding powers instead. For investigating agencies, it lowers the practical cost of relying on CCTV and body-camera evidence, since courts need not treat every recording as requiring a corroborating oral transcript. For the defence bar, the more consequential move is likely toward challenges at the authentication stage, hash mismatches, custody gaps, incomplete certificates under the incoming BSA framework, rather than challenges to form once a record is properly in evidence, echoing the pattern already visible in disputes over CCTV continuity in cases such as *Tomaso Bruno*[21]. Legislatively, clearer guidance, whether by rule of court or a further Law Commission study, on when explanatory testimony becomes obligatory for lengthy or technically complex recordings would reduce the interpretive burden the judgment otherwise places on trial judges.

IX. Conclusion

Kailash does not alter the conditions of admissibility settled in *Anvar* and *Arjun Panditrao Khotkar*; it clarifies, instead, what a court may do once those conditions are met. By affirming that a properly certified video speaks for itself, the Court has removed an artificial evidentiary

[20]Law Commission of India, 185th Report on Review of the Indian Evidence Act, 1872, at 245-49 (2003).
[21]Tomaso Bruno v. State of U.P., (2015) 7 S.C.C. 178, ¶ 25 (India) (treating non-production of CCTV footage as bearing on the prosecution's burden, without imposing a transcription mandate).

bottleneck while leaving open, appropriately, a measure of discretion for cases where explanation genuinely assists comprehension. Whether that discretion hardens into predictable practice, or splinters into inconsistent High Court applications, will determine whether this decision is remembered as a stabilising clarification or merely the opening word in a longer doctrinal conversation now unfolding under the Bharatiya Sakshya Adhiniyam.