IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CONFIRMATION CASE NO.3 OF 2024

State of Maharashtra … Appellant

Vs.

Tejas @ Dada Mahipati Dalvi, presently in Yerwada Central Prison, Pune … Respondent

WITH

INTERIM APPLICATION NO.4190 OF 2025

WITH

INTERIM APPLICATION NO.2627 OF 2025

IN

CONFIRMATION CASE NO.3 OF 2024

Tejas @ Dada Mahipati Dalvi … Applicant

Vs.

State of Maharashtra … Respondent

WITH

CRIMINAL APPEAL NO.367 OF 2024

Tejas @ Dada Mahipati Dalvi … Appellant

Vs.

State of Maharashtra and another … Respondents

WITH

CRIMINAL APPEAL NO.1262 OF 2024

Sujata Mahipati Dalvi, presently in Yerwada Central Prison, Pune … Appellant

Vs.

State of Maharashtra and others … Respondents

Mr. Shrikant V. Gavand, APP for Appellant / Applicant-State in CONF/3/2024 and for Respondent-State in IA/4190/2025, IA/2627/2025, APEAL/367/2024 and APEAL/1262/2024.

Ms. Rebecca Gonsalvez with Ms. Sahana Manjesh for Respondent in CONF/3/2024 and for Applicant in IA/4190/2025 and for Appellants in APEAL/367/2024 and APEAL/1262/2024.

CORAM : MANISH PITALE & SHREERAM V. SHIRSAT, JJ.

DATE : MARCH 10, 2026

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ORDER : (*Per Justice Manish Pitale*)

Interim Application No.4190 of 2025

. The accused No.1 has filed this application invoking Sections 408 and 432 read with Section 329 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for a direction that the chemical analysers of the concerned laboratory be summoned for cross-examination as chemical analyst's reports (CA reports), being as many as 12 in number, were directly produced during the recording of evidence of the investigating officer (P.W.29). Reliance is placed on judgements of the Supreme Court and this Court to contend that in the absence of summoning of the chemical analysers by the Court and depriving the accused from cross-examining them has vitiated the trial. On this ground, it is contended that the impugned judgment and order deserves to be set aside and the matter ought to be remanded to the Sessions Court.

2. It is additionally contended that in the event the application is allowed and the matter is remanded to the Sessions Court, a direction ought to be issued for statement under Section 313 of the Cr.P.C. (now Section 351 of BNSS) to be recorded in the context of the further evidence that would come on record. In fact, it is brought to our notice that recording of the statement under Section 313 of the Cr.P.C., in the present case, was also vitiated because questions were put to both the accused persons jointly for eliciting their responses. In that light, it is submitted that the entire statement under Section 313 of the Cr.P.C. ought to be recorded afresh.

3. The present confirmation case and the two appeals arise from judgement and order dated 22.03.2024 passed by the Court of Additional Sessions Judge, Pune (hereinafter referred to as the 'Sessions Court') in Special Sessions Case No.176 of 2023. By the said judgement and order,

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the applicant (accused No.1) has been convicted for offences under Sections 363, 302, 376(2), 376A, 376AB and 201 of the Indian Penal Code, 1860 (IPC) and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). He has been sentenced to death for offences under Sections 376A and 376AB of the IPC as also Section 6 of the POCSO Act. For the other offences, he has been sentenced for imprisonment for various durations. Accused No.2, the mother of accused No.1, has been convicted under Section 201 of the IPC and Section 21 of the POCSO Act. She has been sentenced to undergo seven years of imprisonment for offence under Section 201 of the IPC and for a period of six months under Section 21 of the POCSO Act.

4. Since this Court is dealing with the said application bearing Interim Application No.4190 of 2025, a detailed reference to the manner in which the investigation proceeded and the prosecution case, is not necessary and a very brief reference to the same would give the context in which the present application is being considered.

5. The accused No.1 i.e. the applicant herein is alleged to have brutally assaulted the victim, who was a girl aged about 6 years and 10 months. She was a minor girl living in the neighbourhood. She suffered aggravated penetrative sexual assault of extreme brutality and she had deep cut wounds on her throat due to which she died. Accused No.2 is the mother of accused No.1 and it is alleged that she assisted the accused No.1 in concealing the dead body of the victim. The case of the prosecution is based on circumstantial evidence, including last seen theory.

6. Upon charge-sheet being filed and charges for the aforesaid offences being framed, the prosecution led evidence to prove its case. By the said impugned judgement and order, the Sessions Court accepted the

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case of the prosecution and convicted and sentenced the accused in the aforesaid manner.

7. A perusal of the instant application shows that the following prayers have been made:-

"A. Direct the Ld. Additional Sessions Judge, Pune, to summon and allow cross-examination by counsel for the Applicant of K.V. Sontakke, Assistant Chemical analyzer, RFSL, Pune involved in preparation of the report ML Case No. Bp-4906/22 (Page 342), ML Case No. 5079 (Exh. 166, Page 343), ML Case No. 4950 (Page 344), ML Case No. 4905 (Page 345), Bp-5147/22 (Page 347).

B. Call for complete laboratory documentation of the Regional Forensic Science Laboratory, Pune, in respect of Chemical Analysis Report in ML Case No. Bp-4906/22 (Page 342), ML Case No. 5079 (Exh. 166, Page 343), ML Case No. 4950 (Page 344), ML Case No. 4905 (Page 345), Bp-5147/22 (Page 347), and supply copies to the Applicant, including but not limited to copies of the following:

a. All laboratory documentation including case acceptance form, internal registers, movement registers, receiving registers, blood grouping sheet, proforma for forwarding samples to other division, bench notes, worksheets, chain of custody form, M.O articles sheet, photographs, details of control samples used;

b. Details of tests conducted and techniques used for examination of the samples received as well as the results of these tests;

c. Working procedure manuals including of biology and/or serology division used in examination of the exhibits;

d. Details of seals and sample seals of all exhibits received.

C. Direct the Ld. Additional Sessions Judge, Pune, to summon and allow cross-examination by counsel for the Applicant of S.S.Mane, Assistant Chemical analyzer, RSFL Pune involved in preparation of DNA Report in ML Case No. DNAp-872/2022 (Page 333), ML Case No. DNAp-817/2022 (Page 335-336), ML Case No. DNAp-797/22 (Page 337, 339), and ML Case No. DNAp-871/2022 (Page 339-341).

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D. Call for complete laboratory documentation of Regional Forensic Science Laboratory, Pune in respect of DNA Report in ML Case No. DNAp-872/2022 (Page 333), ML Case No. DNAp-817/2022 (Page 335-336), ML Case No. DNAp-797/22 (Page 337, 339), and ML Case No. DNAp-871/2022 (Page 339-341) and supply these copies to the Applicant, including but not limited to copies of the following:

a. All laboratory documentation including worksheets/datasheets, bench notes related to tests conducted and methods used for DNA extraction, quantitation, amplification, electrophoresis and interpretation for all the samples received, and control samples used during these steps;

b. All documentation including the case acceptance form, case opening sheet, documentation relating to receipt and dispatch of articles, relevant extracts from registers, chain of custody form, proforma for forwarding samples to other division, forwarding letters, or any other documentation with respect to the packaging seals on the articles received, storage of the articles, and their movement within the laboratory;

c. Logbooks for equipment used at each stage of the DNA profiling process including extraction, quantitation, amplification, electrophoresis, and interpretation; and calibration records for those equipment for the relevant period.

d. Colour copies of the electropherograms for all evidence and references samples received, allelic ladders, internal size standard, and control samples used;

e. Electronic raw data (in .fsa or hid format) for all the samples received in this case and the control samples used;

f. Working procedure manuals including DNA manual and any other manual which was followed during the examination in this case;

g. Details of kits and softwares used for DNA extraction, quantification, amplification, electrophoresis and interpretation in this case along with manuals of such kits and softwares;

h. Details of any internal validation studies conducted within the laboratory for setting standards followed during different stages of the DNA profiling process;

i. All documentation regarding the quality control tests for DNA examination passed by the DNA division

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and the quality control manual followed within the laboratory, if any;

j. All correspondence with the police officials regarding the DNA report; and

k. Details of seals and sample seals of all exhibits received.

E. Direct that after the recording of additional evidence, the Applicant be examined under s. 313 CrPC in respect of such additional evidence and permit the Applicant to lead defence evidence, if any.

F. Set aside the judgment and order dated 22.03.24 passed by the Ld. Additional Sessions Judge, Pune, in Sessions Case No. 176 of 2023, convicting the Applicant and direct the Ld. Additional Sessions Judge, Pune to rehear arguments based on the additional evidence and pass a judgment afresh as per law.

G. Pass such further and other orders as this Hon'ble Court may deem fit and proper, in the interest of justice."

8. Ms. Rebecca Gonsalvez, learned counsel is appearing on behalf of the applicant (accused No.1), who is the respondent in Confirmation Case No.3 of 2024 and the appellant in Criminal Appeal No.367 of 2024. She also appears for accused No.2, who is the appellant in Criminal Appeal No.1262 of 2024. It is to be noted that since the advocate appearing for the appellant in Criminal Appeal No.1262 of 2024 was not appearing in this Court, by order dated 18.02.2026, we discharged the said advocate and appointed Ms. Gonsalvez to appear on behalf of the appellant (accused No.2) in Criminal Appeal No.1262 of 2024.

9. Ms. Rebecca Gonsalvez submitted that a perusal of the impugned judgement and order of the Sessions Court would show that in paragraph 143 onwards, the Sessions Court specifically relied upon the CA reports, which included serology reports and reports pertaining to DNA profiles, to hold against the appellants. In this context, attention of this Court is

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invited to the evidence of the investigating officer (P.W.29) and it is highlighted that during the recording of examination-in-chief of the said witness, for the first time, as many as 12 CA reports were brought on record and directly marked as exhibit-166 (collectively). Attention of this Court was invited to the *Rojnama* dated 18.10.2023, when the said CA reports were brought on record during the recording of examination-in-chief of the investigating officer (P.W.9). It was highlighted that the said CA reports were simply taken on record and there is nothing on record to show that the copies of the same were made available to the accused or their counsel. Neither the prosecution nor the Sessions Court called the authors of the said reports i.e. the Assistant Chemical Analysers of the concerned laboratory for examination. Hence, there was no occasion for cross-examining such crucial witnesses. Yet, the said CA reports were heavily relied upon by the Sessions Court in holding against the appellants.

10. It was further submitted that in the statement of the accused persons recorded under Section 313 of the Cr.P.C., only the fact of the 12 CA reports marked as exhibit-166 (collectively) having been received from the concerned department, was put as an incriminating circumstance to the accused persons. None of the details of the said reports were put to the accused persons, thereby further showing the error committed by the Sessions Court.

11. On this basis, it was submitted that the trial was vitiated on that count. It was submitted that in similar circumstances, the Supreme Court and this Court set aside the judgements and orders of the trial Courts and remanded the matters back for consideration afresh on the said aspect of the matter. Reliance was placed on judgement of the Supreme Court in the case of *Irfan alias Bhayu Mevati Vs. State of Madhya Pradesh*, **2025 SCC OnLine SC 359**. It was submitted that the said position of law was

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followed by a Division Bench of this Court in the case of *State of Maharashtra Vs. Sanjay Baban Katkar* (judgement and order dated **23.07.2025** passed in **Criminal Confirmation Case No.3 of 2022** with **Criminal Appeal No.1313 of 2023**) and in the case of *Sanjay Deopuri Puri Vs. State of Maharashtra* [judgement and order dated **27.11.2025** passed in **Criminal Application (APPA) No.842 of 2025** in **Criminal Appeal No.329 of 2024** with **Criminal Confirmation Case No.3 of 2024**].

12. It was submitted that the same course of action may be adopted in the instant case. The impugned judgement and order may be set aside on the said ground and the matter can be remanded to the Sessions Court for summoning the said Assistant Chemical Analysers, so that the appellants also get an opportunity to cross-examine the said witnesses.

13. It was further submitted that the entire statement under Section 313 of the Cr.P.C., in the present case, was vitiated because questions were put jointly to both the appellants i.e. the accused persons. In that light, it was submitted that this Court may consider directing the Sessions Court to record the statement under Section 313 of the Cr.P.C. afresh after the evidence of the said witnesses i.e. the Assistant Chemical Analysers is recorded.

14. It was further submitted that in the meanwhile, the accused No.2 i.e. appellant in Criminal Appeal No.1262 of 2024, being a woman, may be released on bail. It was highlighted that the accused No.2 was convicted for offences under Section 201 of the IPC and Section 21 of the POCSO Act, both being bailable offences. It was further brought to the notice of this Court that she was arrested on 04.08.2022 and she has already suffered incarceration for 3 years and 7 months, while the maximum period of sentence imposed upon her is 7 years. It was submitted that the said appellant would abide by the conditions that this

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Court may impose.

15. Mr. Shrikant Gavand, learned APP appearing for the appellant-State in the confirmation case as well as for the respondents-State in the two appeals submitted that the record indeed demonstrated that the Assistant Chemical Analysers were not summoned. It was submitted that the appellants i.e. the accused persons also never raised this issue before the Sessions Court. The said issue is being raised for the first time before this Court. The learned APP fairly submitted that there could be no denial about the course of action adopted by this Court in similar circumstances, following the position of law clarified by the Supreme Court in various judgements, including the judgement in the case of **Irfan alias Bhayu Mevati Vs. State of Madhya Pradesh** *(supra)*. On this basis, it was submitted that this Court may pass appropriate orders. On the aspect of the Sessions Court having recorded the statement under Section 313 of the Cr.P.C. of the accused persons jointly, it was submitted that the record indeed demonstrated the same. On the question of granting bail to the appellant in criminal Appeal No.1262 of 2024 i.e. accused No.2, it was submitted that if this Court is inclined to remand the matter to the Sessions Court, stringent conditions may be imposed considering the brutal and ghastly nature of the offence.

16. We have considered the rival submissions. Before dealing with the present case, it would be appropriate to refer to the approach adopted by the Supreme Court and this Court in such cases. In the case of **Irfan alias Bhayu Mevati Vs. State of Madhya Pradesh** *(supra)*, the Supreme Court was concerned with a similar situation where the accused had been sentenced to death and the conviction was based on CA reports, including DNA analyst's reports, along with other evidence and material on record. Upon finding that the scientific experts, concerning such reports, were not summoned by the trial Court, the

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Supreme Court thought it fit to set aside the judgements of the trial Court and the High Court. The Supreme Court proceeded to remand the matter to the trial Court for examination of the scientific experts connected with the DNA reports and in that context, to record the statement of the accused persons under Section 313 of the Cr.P.C. The relevant portion of the said judgement reads as follows:-

> "29. The instant case involves capital punishment and thus, providing a fair opportunity to the accused to defend himself is absolutely imperative and non-negotiable. The trial in the case at hand was concluded without providing appropriate opportunity of defending to the accused and within and within a period of less than two months from the date of registration of the case, which is reflective of undue haste. The failure of the trial Court to ensure the deposition of the scientific experts while relying upon the DNA report, has definitely led to the failure of justice thereby, vitiating the trial.
>
> 30. In the wake of the above discussion, we allow the application filed by the appellants. The case is remanded to the trial Court who shall summon the scientific experts associated with the preparation and issuance of the DNA report with the entire supporting material. These scientific experts shall be summoned and examined as Court witnesses with a proper opportunity of examination to the prosecution and the defence in that order. In case the accused are not represented by a counsel of their choice, a defence counsel having substantial experience in terms of the guidelines laid down by this Court in *Anokhilal* (supra) (extracted in Para 26 of this judgment) shall be appointed to defend the accused and in the *de novo* trial.
>
> 31. Pursuant to the testimony of the scientific experts being recorded, the accused shall be again questioned under Section 313 CrPC in context to the fresh evidence. They shall be provided a fair opportunity of leading defence evidence. Thereafter, the trial Court shall proceed to re-hear the arguments and decide the case afresh as per law. The entire process as directed above, shall be completed within a period of four months from the date of receipt of this order.
>
> 32. That the discussion made above is confined to the issue of the right of the accused to seek examination of the scientific experts connected with the DNA report and the same shall not be taken to be a reflection on the merits of the matter, which shall be considered and gone into, uninfluenced by any

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> observations made by us in this order.
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> 33. Consequently, the judgment dated 21st August, 2018, passed by the trial Court and the judgment dated 9th September, 2021, passed by the High Court are quashed and set aside.
>
> 34. The appeals are allowed accordingly."

17. In a similar situation, concerning confirmation of death sentence, in the case of **State of Maharashtra Vs. Sanjay Baban Katkar** *(supra)*, a Division Bench of this Court in its order dated 23.07.2025 followed the aforesaid dictum laid down by the Supreme Court in the case of **Irfan alias Bhayu Mevati Vs. State of Madhya Pradesh** *(supra)* and set aside the impugned judgement and order of the trial Court remanding the matter for examination of the concerned expert witnesses, with ancillary directions. It was held that the failure of the trial Court in summoning the scientific experts had led to failure of justice, thereby vitiating the trial. It is important to note that while following the aforesaid position of law laid down by the Supreme Court and remanding the matter to the trial Court, the Division Bench of this Court in the case of **State of Maharashtra Vs. Sanjay Baban Katkar** *(supra)* observed as follows:-

> "25. The Hon'ble Supreme Court in **Irfan alias Bhayu Mevati's** case had directed the trial Court to re-hear the arguments and decide the case afresh as per law after the scientific experts were examined and after the accused was asked questions under Section 313 of Cr.P.C. The Hon'ble Supreme Court had not directed the trial Court to conduct the trial *de novo* by wiping out the evidence which is already recorded."

18. Thus, it is evident that even when the Court found it fit to set aside the judgement of the trial Court and to remand the matter back to the trial Court, the trial was not directed to be conducted *de novo* by wiping out the evidence that was already on record; instead, the matter

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was remanded only to the limited extent of examining such witnesses, concerning the CA reports / DNA reports with further ancillary directions.

19. In the case of **Sanjay Deopuri Puri Vs. State of Maharashtra** *(supra)*, another Division Bench of this Court at the Nagpur Bench followed the same course of action and consequently, set aside the judgement and order of the trial Court, remanding the matter back for the aforesaid purpose.

20. We find from the record that, amongst other circumstances, the Sessions Court, in the present case, did rely upon the CA reports at exhibit-166 (collectively) to hold against the appellants i.e. the accused persons. This is evident from paragraph 143 onwards of the impugned judgement and order of the Sessions Court. We find that the Sessions Court committed a grave error while observing in paragraph 142 of the impugned judgement and order that since the accused did not move any requisition for examining the chemical analysers for any specific cause, the reports of the chemical analysers at exhibit-166 (collectively) were being directly admitted in evidence without examining the chemical analysers. Such a course of action was clearly not open for the Sessions Court, for the reason that the Supreme Court has laid down that such witnesses ought to be court witnesses even if the prosecution fails in its duty to summon such crucial witnesses, if at all the CA reports / DNA reports are to be relied by the prosecution. We are of the opinion that the impugned judgement and order to that extent is vitiated and the trial itself stood vitiated to that extent.

21. There can be no doubt that the whole purpose of the trial is to ascertain the truth of the matter and all steps in the direction of unearthing the truth ought to be taken by the Court, even if the prosecution is remiss in its duty and the accused at the relevant point in

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time have not shown awareness. As a matter of fact, from the stage of investigation, the duty of all persons in authority is to ensure that the every bit of material is brought on record, which would assist the Court in ascertaining the truth of the matter. Anything short of that would vitiate the entire process. We find that the applicant (accused No.1) has been able to make out a case for allowing the present application.

22. We also find that since we are allowing the instant application, it is necessary to give ancillary directions for recording of statement under Section 313 of the Cr.P.C. In fact, we find substance in the contention raised on behalf of the appellants that the entire statement under Section 313 of the Cr.P.C. ought to be recorded afresh, for the reason that the Sessions Court, while doing so, had put questions and circumstances to the accused persons jointly, which could not have been done.

23. As regards releasing the appellant (accused No.2) in Criminal Appeal No.1262 of 2024, we find that she has already suffered incarceration for a period of 3 years and 7 months, while she has been sentenced to suffer imprisonment for 7 years. This indicates that she has already undergone substantial period of the sentence. The matter being remanded to the Sessions Court would obviously consume some time and if she continues to remain in custody, she will have to suffer further incarceration. We also find that she was convicted for the offences that were bailable. Hence, we are inclined to release her on bail while allowing the instant application, setting aside the impugned judgment and order of the Sessions Court and remanding the matter for the aforesaid limited purpose to the Sessions Court.

24. In view of the order that we propose to pass in Interim Application No.4190 of 2025, we find that the confirmation case as well as both the appeals of the accused persons and all pending applications will stand disposed of.

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25. Hence, all the aforesaid proceedings stand disposed of as per the following order:-

(i) Interim Application No.4190 of 2025 is allowed in terms of prayer clauses (A) to (F), quoted hereinabove;

(ii) Consequently, the impugned judgement and order dated 23.03.2024 passed by the Sessions Court in Special Sessions Case No.176 of 2023 is quashed and set aside. The case is remanded to the said Sessions Court for the purpose of summoning witnesses in terms of prayer clauses (A) and (C) in the application and for carrying out the ancillary directions granted in terms of prayer clauses (B) and (D). It is made clear that the remand is only for the aforesaid limited purpose and the remaining evidence, that came on record, shall remain as it is;

(iii) The appellants shall be given sufficient opportunity to cross-examine the said witnesses that shall be summoned in terms of the directions given hereinabove. The entire statement under Section 313 of the Cr.P.C. shall be recorded afresh with separate statements being recorded for the two appellants (accused Nos.1 and 2). This will obviously include the further material that will come on record in the light of the directions given hereinabove.

(iv) Considering the aforesaid discussion, the appellant in Criminal Appeal No.1262 of 2024 i.e. accused No.2 shall be released on bail on the following conditions:

(a) The said appellant (accused No.2) shall furnish P.R. Bond of Rs.25,000/- and one or two sureties in the like amount to the satisfaction of the Sessions Court;

(b) The said appellant (accused No.2) shall remain present before the Sessions Court on each and every date of the

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proceedings;

(c) Upon being released on bail, she shall communicate the details of her contact numbers and residential address to the Sessions Court, immediately; and

(d) The appellant (accused No.2) shall co-operate with further proceedings before the Sessions Court so that the proceedings are completed expeditiously.

(v) Respondent in Confirmation Case No.3 of 2024, who is the appellant in Criminal Appeal No.367 of 2024 (accused No.1) shall be produced before the Sessions Court on 07.04.2026. The appellant in Criminal Appeal No.1262 of 2024 (accused No.2) shall also remain present before the Sessions Court on the said date;

(vi) The record and proceedings shall be sent back to the Sessions Court urgently, and in any case, within three weeks from today through special messenger;

(vii) The Sessions Court shall proceed in the matter in accordance with law and pass final judgement and order expeditiously, and preferably within four months from 07.04.2026;

(viii) The Sessions Court shall proceed in the matter without being influenced by any observations made in the present order.

26. The Criminal Confirmation Case No.3 of 2024 and Criminal Appeal Nos.367 of 2024 and 1262 of 2024 along with all pending applications stand disposed of in above terms.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**

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