

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's or Judge's orders.
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CRIMINAL WRIT PETITION NO. 218 OF 2015

VIJAY S/O SARJERAO BADE & ANR
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Petitioner : Mr. Satish A. Gaikwad.
APP for Respondent: Mr. S. A. Ambad.

CORAM: T. V. NALAWADE, J.
DATED: 30th JUNE, 2015.

PER COURT:

1. The petition is filed to challenge the order made by learned Special Judge, M.C.O.C.A., Aurangabad in M.C.O.C.A. Case No.2 of 2010 at Exhibit 231. This application was filed by present Petitioner for permission to cross examine P.W.31 Arvind Chavariya. This Police Officer has recorded the confessional statement of Accused No.5 Baliram Arjun Raibhate and in the evidence of Police Officer the confessional statement is proved by the prosecution. In view of this circumstance, application was moved by the present petitioners, who

are accused Nos.3 and 4 for permission to cross examine Arvind Chavariya. The learned Judge of the trial Court has observed that the witness has not uttered a single word against accused Nos. 3 and 4 and it is also not stated on which point the defence wanted to cross examine the witness.

2. Both the sides are beard.

3. Copy of the so called confessional statement, recorded under section 18 M.C.O.C. Act is produced. This Court has gone through this statement and it is proved in the case filed against the petitioners. The confessional statement of Baliram shows that on 10th April, 2010 he, present applicants and other two accused like Deepak Jawale and Abhay Kore were together. They had taken meals in one hotel and they had taken liquor also and Baliram had taken the responsibility to pay the bill of the hotel. The statement shows that the present applicants and other two accused like Deepak jawale and Abhay Kore had come to him in Indica Car. There is allegation that this Indica Car was used by Deepak Jawale and Abhay Kore, Vijay Bade and Eknath for intercepting the car of the victim and then the offence of

rape was committed. It appears that there is allegation against the present petitioners that they had abated the offence committed by Deepak Jawale and Abhay Kore. In view of the contents of the confessional statement, which is proved and in view of section 30 of Evidence Act, at least at this stage it cannot be said that the confessional statement cannot be used against the present petitioners. They want to defend the case by cross examining the officer who had recorded the confessional statement and in view of the contents of the confessional statement this Court holds that opportunity needs to be given to the Petitioners to cross examine the witnesses.

4. In the result, the petition is allowed. The order made by learned Judge of the trial Court is hereby set aside and the application Exhibit-231 is allowed.

[T. V. NALAWADE, J.]

Dt.30/06/2015
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