

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Writ Petition No. 246 of 2015

Deepak s/o. Pundalik Ingle,
Age : 26 years,
Occupation : Agriculture,
R/o. Kelgaon Murdeshwar,
Taluka : Sillod,
District : Aurangabad.

.. Petitioner.

versus

The State of Maharashtra.

.. Respondent.

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Mr. R.A. Jaiswal, Advocate, for the petitioner.

*Mr. S.M. Jadhav, Additional Public Prosecutor, for
the respondent - State.*

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 17TH MARCH 2015

PER COURT :

1. Heard Adv. Mr. R.A. Jaiswal appearing for the petitioner, and learned APP Mr. S.M. Jadhav appearing for the respondent - State.
2. Rule. Rule made returnable forthwith. By consent, heard finally.

3. The petitioner is an accused in Sessions Case No. 184/2010, pending before the Additional Sessions Judge-2, Aurangabad. The trial has commenced. Till today, the prosecution has examined as many as six witnesses.

4. On 12th November 2013, the petitioner herein filed an application for recalling prosecution witnesses viz. PW 1, PW 2 and PW 6 for cross examination. It was contended before the Sessions Court, that since the applicant is in jail during the pendency of the trial, he could not give necessary instructions to the Advocate representing him at the trial and, therefore, the witnesses were not properly cross examined on material aspects.

5. It is pertinent to note, that the petitioner herein had not assigned any grounds for recalling the said witnesses, besides stating that the accused is in jail. It was not brought to the notice of the court, the points on which the said witnesses need to be re-examined by the accused. The learned Sessions Judge by an order dated 12th November 2013, was pleased to reject the application. The learned Sessions Judge has rightly observed that the accused has not assigned any satisfactory ground for recalling the witnesses. The learned Sessions Judge has allowed the application to the extent of PW 6 with a condition precedent that an amount of Rs. 1,000/- be paid towards Bhatta.

6. The learned Counsel for the petitioner submits that it is necessary in the interest of justice, to re-examine PW 1, PW 2 and PW 6

on material points. According to the learned Counsel for the petitioner, accused would be deprived of an opportunity of a fair trial.

7. Although the observations and reasons assigned by the learned Sessions Judge do not warrant any interference, accused deserve an opportunity of fair trial and hence, the present petition is being disposed of with liberty to the accused to file a fresh application seeking recalling of the witnesses by assigning reasons and the points on which the said witnesses need to be cross examined. If such application is filed within a period of two weeks from today, the learned Sessions Judge shall consider the same on its own merits and decide the said application within a period of one week from the date of filing, after hearing the prosecution.

8. With the above observations, the petition is being disposed of. Rule is discharged.

9. Humdast allowed.

(SMT. SADHANA S. JADHAV)
JUDGE

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