

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

Criminal Writ Petition No.1712 of 2016

Sandip s/o Pannalal Mahule
Age 29 years, Occupation: Labour,
R/o Galle Borgaon, Taluka Khultabad,
District Aurangabad.

.. Petitioner.

Versus

The State of Maharashtra
Through Police Inspector,
Police Station, Khultabad
District Aurangabad.

.. Respondent.

Shri. Abhyaysinh K. Bhosle, Advocate, for petitioner.

Shri. G.O. Wattamwar, Additional Public Prosecutor, for
respondent.

CORAM: T.V. NALAWADE, J.

DATE : 24 JANUARY 2017

ORAL JUDGMENT :

1) Rule, rule made returnable forthwith. Heard
both the sides by consent for final disposal.

2) The present proceeding is filed to challenge the
order made on Exhibit 66 in Sessions Case No.7/2012

pending in the Court of the learned Additional Sessions Judge Aurangabad. It appears that in the past, when Advocate for the present petitioner filed "no instructions pursis", orders of "No Cross" were made in respect of PW 1 and PW 2. These orders were made in 2014 and 2015 when the case is filed for offence punishable under section 376 of the Indian Penal Code. The application was moved at Exhibit 49 for permission to cross examine these witnesses. The application was allowed subject to cost of Rs.600/- by order dated 25-8-2016. It appears that cost amount was not deposited and then on 19-11-2016 application at Exhibit 66 was filed for permission to deposit the cost as it was not deposited within time given by the Court. This application is rejected by the trial Court.

3) When it is a police case and charge for serious offence like offence under section 376 IPC is framed, opportunity to cross-examine the prosecution witnesses cannot be denied. In criminal cases, order like "No Cross" is not expected to be made. If there is nobody to represent the accused, in ordinary course, the Court is expected to

appoint some counsel as *amicus curiae* for the accused through Legal Aid, at the cost of the Government. If the accused is not cooperating then best way is to cancel his bail, put him behind the bars and then take steps like appointing counsel at the cost of the Government. In the present matter the accused is on bail and he is now ready to deposit the cost amount. In view of the aforesaid circumstances and the right of the accused to contest the matter, this Court holds that the order made by the learned Judge of the trial Court needs to be set aside.

4) The petition is allowed. The order dated 19-11-2016 made on Exhibit 66 is set aside. The application Exhibit 66 is allowed. The cost amount is to be deposited on or before 3 February 2017 and the Court is to take further steps. It will be open to the trial Court to take steps like cancellation of bail if the accused is not cooperating, in future. Rule made absolute in aforesaid terms.

Sd/-
(T.V. NALAWADE, J.)

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