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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2019 OF 2017

Pramod Raosaheb Bhilare

... Petitioner

vs.

The State of Maharashtra

... Respondent

Mr. Vaibhav V. Ugale for the Petitioner.

Mr. S. V. Gavand, APP, for the Respondent-State.

CORAM : A.K. MENON, J.

DATE : 17th JULY, 2017

P.C.

1. By this petition, the petitioner seeks to impugn an order dated 8th March, 2017. The impugned order rejected the application made by the accused who is presently lodged in Yerwada Jail seeking leave to participate in the trial wherein two witnesses have already been examined. It is submitted across the bar the learned counsel for the petitioner that further witnesses are to be examined. However, the present petitioner had no opportunity to cross examine the two witnesses whose examination has been concluded without giving him an opportunity to cross examine.
2. Heard counsel for the petitioner and the learned APP, the learned counsel for the petitioner has pointed out from the averments in the petition that by the application Exhibit 316 before the lower Court in Sessions Court no.489 of 2013 the petitioner actually intended that he may be permitted to participate in the trial and that the prayer in the application is the

charge be framed against him.

3. The learned Judge has, however, rejected the application on the ground that there are “no supporting documents” and that the trial had already commenced and further that it would delay the trial which according to the Judge was time bound by virtue of an order passed by this Court. Although no such order is produced before me, today it appears that the contents of the application are not entirely intelligible and therefore the order passed thereon may result in miscarriage of justice if the petitioner is not permitted to cross examine the said two witnesses whose examination is stated to be completed. On the basis of these submissions, I find that this is a matter which calls for disposal at this stage itself.
4. Accordingly, I issue Rule. Rule returnable forthwith.
5. Having considered the facts, it is appropriate that the petitioner be permitted to cross examine the said two witnesses and other witnesses. By rejecting the application the accused is being deprived of an opportunity to defend himself in accordance with law. In the circumstances, the impugned order cannot be sustained. If charges have to be framed against the present petitioner and he has to be given an opportunity to defend himself, it would be appropriate that the impugned order is set aside and liberty be granted to the petitioner to approach the Court with a proper application setting out relevant grounds. In the circumstances, I pass the following order:-

- (i) Rule is made absolute in the above terms.
- (ii) Rule is made returnable forthwith.
- (iii) The impugned order dated 8th March, 2017 is hereby quashed and set aside.
- (iv) The petitioner is at liberty to file a fresh application before the Sessions Court, Pune, in Sessions Case no.489 of 2013 to seek an appropriate relief of framing charge and relief to cross examine the witnesses concerned.
- (v) No orders as to costs.

(A. K. MENON, J.)