

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.3173 OF 2017

Gautam J. Yadav

.. Petitioner

Vs.

The State of Maharashtra & Anr.

.. Respondents

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Mr.Arshad Shaikh i/b. Mr.M.V. Khatavkar, Advocate for the
Petitioner.

Mr.N.B. Patil, APP for the Respondent - State.

Mr.Kiran Mehta, Respondent No.2, present in person.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 10, 2017.

P.C. :

The petitioner challenging the order passed by the learned Metropolitan Magistrate 18th Court Girgaon, Mumbai on 29th July, 2017, directing the petitioner to remain present before the Court on 11th August, 2017 at 2.45 p.m. Notice issued by the registry of the said Court mentions that the case of petitioner is kept for hearing before the Court on 11th August, 2017 at 2.45 p.m. and that he should attend before that Court on that day at 2.45 p.m. The said order was passed on the application preferred by respondent no.2 who is the witness in the said proceedings.

2 The petitioner had preferred Revision Application before Sessions Court, Thane, challenging order rejecting his

application for discharge. The Revision Application was decided by the Sessions Court by order dated 9th March, 2010, by setting aside order of Magistrate and the petitioner was ordered to be discharge. The said order of discharge is challenged by the State of Maharashtra by preferring criminal Writ Petition No.1811 of 2010. By way of interim relief this Court had stayed the order of discharge passed by the trial Court vide order dated 28th June, 2011. The other accused had also preferred the application for discharge before the trial Court which was rejected. The said order was challenged by co-accused by preferring Writ Petition Nos. 1505 of 2013 and 1506 of 2013. In the said petitions proceedings before trial Court are stayed vide order dated 15th October, 2013 by this Court.

3 Petitioner is aggrieved by the order and notice dated 29th July, 2017. Learned counsel for the petitioner submitted that the petition preferred by State challenging the order of discharge is still pending in the Court and this trial Court should not proceed with trial. He submitted that merely because the order of rejection is being stayed by this Court, the trial cannot proceed. It is submitted that the petitions preferred by co-accused are pending before this Court and the trial Court proceedings are

stayed in those petitions. It is submitted that the impugned order and notice was issued on the basis of application preferred by respondent no.2 and not by State. The learned counsel submitted that in the decision of Hon'ble Supreme Court in the case of ***M/s.Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association, Madras***¹, it has been observed that by staying the operation of order under challenge the existence of order under challenge is not wiped out. The counsel also referred to order dated 13th April, 2017 passed by this Court in Criminal Writ Petition No.720 of 2017. It is submitted that the Court in the said order has clarified the locus standi of respondent no.2.

4 Respondent no.2 had strongly opposed for grant of any relief to the petitioner. It is submitted that the High Court has stayed the order of discharge while admitting the petition preferred by the State. It is submitted that once the stay has been granted to the order of discharge, the trial Court proceedings stands revived and the petitioner is required to face the prosecution. It is also submitted that the trial has been pending for a long period of time. He also submitted that he has locus as he has stepped into shoes of his sister who as the complainant.

1 AIR 1992 SC 1439

5 On perusal of the documents it is apparent that the order of discharge has been challenged in the Writ Petition No.1811 of 2010. The petition preferred by the co-accused is also pending before this Court wherein the proceedings are stayed. The trial Court has directed the petitioner to appear before the trial Court on 11th August, 2017. Petitioner is at liberty to prefer an application by remaining present on 11th August, 2017 before the trial Court stating all the aforesaid submissions advanced by the petitioner before this Court including the law laid down by Apex Court on effect of stay, which has been relied upon by petitioner. The petitioner can pray for appropriate relief in the said application. The trial Court shall entertain the application preferred by the petitioner and deal with the same in accordance with law.

6 Hence, I pass the following order:

:: ORDER ::

- (i) The petitioner is permitted to prefer an application before the trial Court by attending the said Court on 11th August, 2017 and seek appropriate reliefs, as observed in this order.

The trial Court shall deal with the application in accordance with law;

- (ii) The trial Court shall not insist on execution of fresh bail bond or bond for appearance by the petitioner;
- (iii) The petitioner is also at liberty to prefer an appropriate application in Writ Petition No.1811 of 2010 for seeking appropriate reliefs;
- (iv) Writ Petition is disposed of accordingly.

(PRAKASH D. NAIK, J.)