

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

WRIT PETITION NO. 3641 OF 2017

Yunus Mahiboob Fakir

..Petitioner

v/s.

The State of Maharashtra

..Respondent

Mr.Priyal Sarda for the Petitioner.

Mr.Prashant Jadhav APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : NOVEMBER 21, 2017.**

P.C.

1. With consent of the respective parties, the petition is taken up for final hearing at the stage of admission.
2. Heard the learned Counsel for the petitioner and the learned APP for the State.
3. The petitioner herein has challenged the Order dated 4th August, 2017 passed by the Addl. Sessions Judge, Solapur, in S.C. 287 of 2016, whereby the learned Judge has dismissed the application to recall PW1 and PW2.
4. The learned Counsel for the petitioner submits that PW1 and PW2 were sought to be recalled for a limited purpose of setting up defence of alibi. The learned Counsel for the petitioner further submits that apart from setting up the defence of alibi and putting suggestions to that effect, the petitioner will not cross examine PW1 and PW2 on any other issue. He further submits that the petitioner will bear the traveling cost and other misc. expenses of PW1 and

PW2. Statement accepted.

5. In the light of the above statement, and in the interest of justice, in my considered view, the petition needs to be allowed.

Hence the order:

- i) The petition is allowed.
 - ii) The impugned order dated 4th August, 2017, passed by the learned Addl. Sessions Judge-1 Solapur, in S.C. No.287 of 2016 is quashed and set aside.
 - ii) PW1 and PW2 be recalled to enable the petitioner to set up his defence of alibi, subject to the petitioner depositing cost of Rs.2000/- (Two Thousand Only) each, to be paid to the PW1 and PW2.
- . Petition stands disposed of accordingly.

(ANUJA PRABHUDESSAI, J.)