

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

CRIMINAL APPLICATION NO. 283 OF 2018

Vipul Ambani

.....Applicant

V/s.

The State of Maharashtra and another

....Respondents

Mr. Anil Desai senior advocate a/w Mr. Vaibhav Bhure i/b Mr. P. B. Pawar for applicant.

Mr. H. S. Venegaonkar for CBI

Mr. P. H. Gaikwad APP for the State.

CORAM : NITIN W. SAMBRE, J.

DATE : MARCH 5, 2018.

P.C.

Heard learned senior counsel Shri. Desai. He submits that the view expressed by the learned Special Judge is contrary to the scheme and object of Section 41D of the Code of Criminal Procedure, 1973 and Article 22 of the Constitution of India. According to him, section itself provides for legal right of an accused to meet an Advocate of his choice during interrogation, when he is arrested and interrogated. He submits that the petitioner is aware about the restrictions imposed under section 41D, that the presence of the lawyer throughout interrogation is not permissible.

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2 *Per contra*, the learned counsel Shri. Venegaokar submits that custody remand is already over and as such the matter remains only for academic importance.

3 Be that as it may, the learned Special Judge expressed that accused/applicant can meet lawyer only to ascertain the ill-treatment, if any. Upon plain reading of section 41D of the Code of Criminal Procedure, 1973 it is amply clear that an accused has every right to meet the lawyer of his choice. Such lawyer is not to remain present throughout interrogation. When the section is amply clear, the restrictions as were put by the learned Special Judge permitting presence of lawyer only for the purpose of ascertaining ill-treatment is not required to gone into as the issue of custody is already over.

4 The view expressed by this Court in the matter of **Mrs. Cecilia Ferenandes V/s. State represented by the Director of General of Police, Goa and another [2005 SCC OnLine Bom 1515]** particularly in para 15 is worth referring which reads thus:

15. *In the fifties, in the case of A. K. Gopalan the Court observed that “no Court shall fail in its duty of allowing a party to give instructions to his vakil freely and frankly without police officers (who naturally represent the other side) being present and taking down shorthand notes of the instructions and broadcasting them thereafter to their superior officers, etc. There is also no rule under which an appellant before the High Court or before the Sessions Judge can be made, under mere executive orders of Government, to submit to the presence of a police officer at the interview between him and his counsel or to such police officers taking down shorthand notes of the instructions between the party and the vakil, obviously for intimating the instructions to the superior officers”. The Court also observed that the High Court has power to safeguard the rights of parties before it in civil and criminal cases as laid down by law, ever since its inception, and those rights have been safeguarded and continued under section 561-A (now section 482) of the Code of Criminal Procedure and the High Court ought to see that those rights are not infringed.*

5 If occasion so arise, the learned Court below is expected to be sensitive to the above observations. With above observations, application stands disposed of.

[NITIN W. SAMBRE, J.]