

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

WRIT PETITION NO. 983 OF 2018

Umesh Ramesh Gaikwad	Petitioner.
Vs.	
The State of Maharashtra	Respondent.

WITH

**CRIMINAL APPLICATION NO. 206 OF 2018
IN
WRIT PETITION NO. 983 OF 2018**

Naresh Chandrakant Kotiwale	Applicant
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IN THE MATTER BETWEEN-

Umesh Ramesh Gaikwad	Petitioner.
Vs.	
The State of Maharashtra	Respondent.

Mr. Prakash Wagh for the Petitioner.
Mr. A.R. Patil APP, for the Respondent-State.
Mr. Prashant Gurav for the Intervenor.

**CORAM : A. S. GADKARI, J.
DATE : 4th SEPTEMBER, 2018.**

P.C.:-

By the present Petition under Article 227 of the Constitution of India, the Petitioner has impugned Order dated 21st September, 2017 passed below Exhibit 87 in Sessions Case No.777 of 2013 by the learned Additional Sessions Judge, Greater Mumbai, thereby rejecting the Application of the Prosecution for recalling of

P.W. 1 Umesh Gaikwad under Section 311 of the Code of Criminal Procedure.

2 The Petitioner is P.W. 1 in the said case. The Petitioner is first informant in C.R. No. 172 of 2013 dated 21th May, 2013 registered with Ghatkopar Police Station. The evidence of Petitioner was recorded on 8th August, 2016 and as he did not support the case of the prosecution, he was declared hostile by the learned APP conducting the said case. The Petitioner was thereafter cross-examined at length by the prosecution and was further cross-examined by the learned advocate for the Accused Nos. 1 and 2.

It appears from the record that, certain vital admissions which are beneficial to the accused Nos. 1 and 2 have been brought on record by the learned Advocate appearing for the accused Nos. 1 and 2 from the testimony of the Petitioner.

3 The prosecution thereafter filed the said Application below Exhibit-87 for recalling the Petitioner for his further examination on the ground that, before recording the evidence of the Petitioner on 8th August, 2016, he was threatened of dire consequences by the accused persons, who are released on bail and therefore he did not support the prosecution case.

The learned Trial Court after hearing the prosecution was pleased to reject the said Application by the reasoned impugned Order dated 21st September 2017.

4 The record further indicates that, the Petitioner also submitted an Application below Exhibit 86 for recording his fresh statement, with the Principal District Judge, City Civil and Sessions Court, Mumbai on 3rd January 2017 to that effect.

5 It is a fact on record that, PW No. 2 Babu Jilhapurm had also received threats from the accused persons however, he at the very first instance, brought the said fact to the notice of the Trial Court and to the Investigating Agency and as per the submission of learned APP, he was granted adequate protection during the course of his recording of evidence.

6 In context thereof, it is to be noted here that the Petitioner has failed to brought the said fact of administration of threat by the accused persons to him to the Trial Court on 8th August, 2016 and it appears that, after vital admissions were extracted from him by the accused persons, as an after thought, he initially filed an Application on 3rd January 2017, with the Principal District Judge, City Civil and Sessions Court, Mumbai, stating that he was threatened of dire

consequences by the Accused persons.

7 The learned Trial Court, after taking into consideration all the relevant aspects of the matter, has rejected the Application preferred by the prosecution under Section 311 of the Code of Criminal Procedure. It is further to be noted here that, even after rejection of the Application of the prosecution on 21st September 2017, the Petitioner, who claims to be a man of prudence, has filed the present Application in this Court on 12th February 2018 belatedly.

8 Be that as it may, after perusing the impugned Order dated 21st September 2017, this Court is of the considered view that, the Trial Court has taken into consideration all the relevant aspects of the matter and has rightly rejected the said Application filed below Exhibit 87 by the impugned Order dated 21st September, 2017.

9 I find no error either in law and/or on the facts committed by the Trial Court while passing the impugned Order.

10 Writ Petition is accordingly rejected.

11 In view of the rejection of the Writ Petition No. 983 of 2018, Criminal Application No. 206 of 2018 does not survive and is accordingly disposed of.

(A.S. GADKARI, J.)

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