

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

CRIMINAL WRIT PETITION NO. 4782 OF 2018

Kum.Nitesh Ekanath Khandagale ... Petitioner

Vs.

State of Maharashtra ... Respondent

Mr.Vilas N. Mali for the Petitioner.

Mr.A.R. Patil, APP for the Respondent – State.

CORAM: MRS.MRIDULA BHATKAR, J.

DATED: NOVEMBER 27, 2018

P.C.:

1. Upon urgent mentioning, taken on production board.
2. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission.
3. This Petition is directed against the order dated 10th October, 2018 passed by the learned Additional Sessions Judge, Mangaon, District Raigad in Sessions Case No. 59 of 2016. The petitioner, who is accused No.1 in Sessions Case No. 59 of 2016, is facing charges under Sections 302, 201 read with 34 of the Indian Penal Code.
4. The prosecution had examined all the witnesses till today. PW-1 was examined on 14th and 16th March, 2018. PW-2 was examined on

27th March, 2018. Thereafter, the petitioner/accused No.1 changed the advocate and at the end of the trial, he moved an application under Section 311 of the Code of Criminal Procedure, 1973 ("the Cr.P.C.") for recalling PW -1 and PW-2.

5. The learned counsel for the petitioner/accused No.1 has submitted that accused No.1 has to be given an opportunity to put up proper defence to PW-1 and PW-2.

6. The learned APP for the respondent while opposing this Petition and supporting the order passed by the learned Additional Sessions Judge, has submitted that the change of the advocate is not a ground for recalling the witness for cross-examination. He has further submitted that both the witnesses were cross-examined by the advocate of accused No.1.

7. I have gone through the evidence of PW-1 and PW-2, as the question of recalling of these two witnesses is involved. It is to be noted that the petitioner/accused No.1 is facing serious charge of murder under Sections 302, 201 read with 34 of the Indian Penal Code wherein the capital punishment is awarded if the offence is proved.

8. Under such circumstances, the petitioner/accused No.1 is to be given a fair and full opportunity to put up his defence by way of cross-examination. Hence, those two witnesses i.e., PW-1 and PW-2 are to be recalled. In view of the above, I pass the following order:

ORDER

- (i) Writ Petition is allowed in terms of prayer clause (a);
- (ii) PW-1 and PW-2 are to be recalled on two dates consecutively and the learned counsel for the petitioner/accused No.1 is directed to complete the cross examination in one date or at the most in two dates consecutively;
- (iii) The trial Court to proceed with the matter;
- (iv) The Advocate of the petitioner/accused No.1 shall co-operate the trial Court;
- (v) The prosecution to produce the witnesses i.e., PW-1 and PW-2 as directed by the Court.

9. Parties to act upon an authenticated copy of this order.

(MRIDULA BHATKAR, J.)