

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5195 OF 2019

Shri.Mohd. Amin Ahmed Surya     ...     **Petitioner**  
Versus  
M/s.Jalaram Jyot Agencies & Anr. ...     **Respondents**

.....

Mr.H. S. Thakkar, Advocate for the Petitioner.

Smt.Sheetal D. Mishra, Advocate for the Respondent No.1.

Mr.A.R.Kapadnis, APP for the Respondent No.2/State.

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**CORAM    : A.M.BADAR J.**

**DATED    : 11<sup>th</sup> OCTOBER 2019.**

**ORAL JUDGMENT :**

1            Heard.

2            Rule. Rule is made returnable forthwith. Heard finally by consent of parties.

3            The petitioner/accused is challenging the Order dated 19/07/2019 passed on his application for permitting him to file evidence on affidavit. The said application came to be rejected without giving any reason, but by observing that in view of the directions given in *M/s.Mandvi Co-operative Bank Ltd. v. Nimesh*

**B Thakore** and the law laid down in the said decision at paragraph 36, the application deserves to be rejected.

4           The approach of the learned trial Court in rejecting the application moved by the applicant for permitting him to file his evidence on affidavit is totally illegal. In Criminal Appeal arising out of SLP Nos 4760/2006, 5689/2006, 1106/2007, 6442/2007, 6443/2007 and 6703/2007 (*M/s.Mandvi Co-operative Bank v. Nimesh B.Thakore*), the Honourable Apex Court has held that even though the legislature in their wisdom did not deem it proper to incorporate the word 'accused' with the word 'complainant' in Section 145(1), it did not mean that the Magistrate could not allow the accused to give his evidence on affidavit by applying the same analogy unless there was a just and reasonable ground to refuse such permission. In the case in hand, no such just or reasonable ground for refusing permission to the accused to adduce evidence on affidavit is seen. Therefore, the impugned Order cannot be sustained. In the result, the following Order :

ORDER

- (i) The impugned Order dated 19/07/2019 rejecting the application for permitting the accused to file evidence on affidavit is quashed and set aside.
  
- (ii) The petitioner/accused is permitted to file evidence on affidavit and if such evidence affidavit is filed, then

subject to all just exceptions, it be read in evidence in the trial.

(iii) The Writ Petition is disposed of accordingly.

**(A.M.BADAR, J.)**