

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

958 CRIMINAL WRIT PETITION NO.279 OF 2021

DEEPAK PRAKASHDAS BAIRAGI
VERSUS
THE STATE OF MAHARASHTRA

..PETITIONER

..RESPONDENT

...
Advocate for Petitioner : Mr. Abhishek Kulkarni
APP for Respondents: Mr. S.P. Sonpawale
...

....
CORAM : N.R. BORKAR, J.
DATE : 17.11.2021

PER COURT :-

This petition takes exception to the order dated 20.01.2021 passed by the learned Sessions Judge, Jalgaon below Exh. 84 in Special (POCSO) Case No. 7 of 2017.

2. The petitioner herein, who is an accused in the said Session case, filed an application at Exh.84 for recalling P.W. No.1 to P.W. No.5, for further cross-examination. The learned trial Court rejected the application by the order impugned.

3. I have heard the learned counsel for the petitioner and learned A.P.P. for the Respondent.

4. Learned counsel for the petitioner submits that the trial Court rejected the application *inter alia* on the ground that it is filed belatedly. It is submitted that said observation is wrong. It is further submitted that no proper cross-examination was conducted by the earlier lawyer of the petitioner. It is submitted that considering the serious nature of offence the trial Court ought to have allowed the application. In support of submission, learned counsel for the petitioner has relied upon in the Judgment reported in the case of **Kishor Anandrao Gaidhane Vs. The State of Maharashtra** reported in (2018 ALL MR (Cri) 3470) so also Judgment reported in the case of **Machindra Dattataya Kokate and Others Vs. State of Maharashtra and Another** reported in (2018 ALL MR (Cri) 3472).

5. On the other hand, the learned A.P.P. for the respondent supported the order impugned.

6. I have perused the application filed by the petitioner at Exh.84. The petitioner has made omnibus prayer to recall the five witnesses on the basis of common ground that they were not properly cross-examined by the earlier Advocate for the petitioner. Such omnibus prayer cannot be

allowed in absence of separate and specific ground for recalling each witness.

7. The petitioner is thus permitted to file fresh application before the trial Court. If such application is filed, the trial Court shall decide the said application on its own merit without being influenced by the observations made in paragraph No.5 of the impugned order dated 20.01.2021 and rejection of the application at Exh.84.

8. The petitioner is permitted to file an application within three weeks from today.

9. The petition is disposed of in above terms.

(N. R. BORKAR)
JUDGE

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