

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

CRIMINAL WRIT PETITION NO. 27 OF 2022

Shaikh Ahmed Shaikh Chand

..PETITIONER

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. S.R. Pande, Advocate for petitioner
Mr. R.B. Bagul, A.P.P. for respondent - State
....

CORAM : R.G. AVACHAT, J.
DATED : 25th FEBRUARY, 2022

PER COURT :

1. Heard.
2. The challenge in this petition is to Clause 7 of judgment and order dated 28th October, 2021 passed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No. 106 of 2011.
3. Clause 7 of the impugned order reads thus :-

“7. A separate charge-sheet be filed against accused no.16, 17 and 18 namely – Shaikh Ahmed Shaikh Chand, Khalil Hussaini Mirulla Hussaini and Prakash Ramdas Harale.”
4. The petitioner herein is Accused No.16 in Sessions Case No. 106 of 2011. Since he did not attend the Court concerned for a period of 5-6 months, trial against him was separated in exercise of power under Section 317 of the Code of Criminal Procedure.

5. Learned Additional Sessions Judge, vide judgment and order dated 28th October, 2021 decided the sessions case acquitting Accused Nos. 1 to 15 therein. It was a case for the offences punishable under Sections 399, 402, 353, 307 read with Section 34 of the Indian Penal Code.

6. It is submitted that presence of Accused Nos. 17 and 18 was not secured for trial in the sessions case. Learned Judge has, therefore, rightly observed that separate charge-sheet be filed against Accused Nos. 17 and 18. When the petitioner (Accused No.16) had already been before the learned Judge, at least for sometime, in sessions case and later on his trial came to be separated in view of Section 317 of the Cr.P.C., no separate charge-sheet need to be filed against him. The petitioner herein can appear before the learned Additional Sessions Judge, Aurangabad, who in turn, to proceed against him in the very case.

7. It is informed that Accused No.17 is no more. His death certificate was sought to be placed on record of this Court. The petitioner can very well place the same before the trial Court which may, in turn, pass necessary order.

8. Criminal writ petition stands disposed of accordingly.

(R.G. AVACHAT, J.)