

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

935 CRIMINAL WRIT PETITION NO.1066 OF 2022

**SAYYAD ASGAR @ GABBAR SAYYAD YASIN AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. V. V. Kabade, Advocate h/f Mr. S. S. Gangakhedkar, Advocate
for the petitioners

Mrs. D. S. Jape, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 22nd November, 2022

P. C.

1. Heard the learned counsel for the parties. The matter is taken up for final hearing with the consent of the parties.

2. A challenge in this petition is to the order rejecting application filed by the petitioners who are accused in Special Case No. 40/2019. By way of application, the petitioners had payed for re-call of witness i.e. PW-4 in the trial though present but was not examined on two occasions. On one occasion cross-examination was deferred because the learned advocate for

accused was not present. On second occasion he was not examined as the Bar Association had passed a resolution and decided not to participate in the work on 13-04-2022. Thereafter, application Exh.63 was filed for re-calling this witness. The learned Sessions Court by its order dated 29-06-2022 rejected the said application on the count that when witness was already present on two occasions, it is the advocate for the accused who avoided to cross-examine the witnesses.

3. This court does not find any perversity in the order passed by the learned courts below. The learned court below has rightly passed the order. However, looking to the fact that the petitioners are facing trial and it will cause prejudice to the right of the petitioners, this court deems it fit to allow the petition. Propriety demands that the petitioners should not suffer reasons not in their hands. At the same time it is necessary to keep in mind that on two occasions witness was required to go back without being cross-examined. Further it needs to be considered that it is not only witness who attend the court by spending his

time, it is also the question of entire court machinery whose time is wasted in securing presence of the witness again the State also requires to be compensated. Hence, the following order:

ORDER

- a] Criminal writ petition is allowed.
- b] The impugned order passed below Exh.63 on 20-06-2022 by the learned Additional Sessions Judge-1, Nanded in Special Case No.40/2019 is quashed and set aside subject to deposit of cost of Rs.10,000/- in the trial court. Out of the amount of Rs.10,000/-, amount of Rs.2,500/- be paid to the PW-4 in addition to witness bhatta. Rest of amount be deposited in the District Legal Aid Sub-Committee, Nanded. Amount be deposited within a period of two weeks.

[KISHORE C. SANT, J.]