

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

CRIMINAL WRIT PETITION NO.1840 OF 2022

Nasim Rashid Shaikh

.. Petitioner

Versus

State of Maharashtra

.. Respondent

.....

Mr.Keshav Chavan, Advocate for the Petitioner.

Mr.Arfa Sait, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK J.

DATED : JULY 06, 2022.

P.C. :

The petitioner is aggrieved by order dated 30th March, 2022, passed by the Sessions Court, Greater Bombay, in Sessions Case No.583 of 2016, whereby the application (Exhibit-66) preferred by the petitioner for calling two witnesses viz. ACP Vijay Shinde and police inspector N.N. Bhor, as defence witnesses, is rejected.

2 Learned advocate for the petitioner submitted that the examination of the defence witnesses is required for just decision of the case. It would support the defence of the petitioner. He is entitled for fair trial. The powers under Section 311 of Cr.P.C. can be exercised at any stage before the final judgment is delivered by the trial Court. The application was supported by the information received by the

petitioner through RTI, as reflected in the information dated 1st July, 2017, forwarded by police inspector Shri N.N. Bhor. In the interest of justice, the petitioner be permitted to examine the aforesaid two witnesses, as his defence witnesses. The trial Court has rejected his application on the ground of delay. However, the application under Section 311 of Cr.P.C. can be made at any stage before the conclusion of trial. The impugned order is object of contrary to Section 311 of Cr.P.C.

3 Learned APP submitted that there is no reason to interfere in the order dated 30th March, 2022, passed by the Sessions Court. The order is elaborate with reasons for not allowing the application under Section 311 of Cr.P.C. The trial Court has assigned detailed reasons for rejecting the application. Learned APP relied upon the observations of the trial Court in the impugned order. It is submitted that the information was received by the accused in 2017, and, the application was preferred by him on 29th March, 2022. Apart from delay, there was no merits in the application for calling the witnesses.

4 The petitioner has been tried for an offence punishable under Section 302 of IPC. The prosecution has examined all the witnesses. The said witnesses were cross examined at the instance of

the petitioner–accused. After concluding the prosecution evidence, statement of accused was recorded under Section 313 of Cr.P.C. The case is at the stage of arguments. The impugned order dated 30th March, 2022, indicate that prosecution has examined P.W.2, daughter of the deceased. The accused had not put up defence either to her or P.W.3, who is the neighbour that the deceased had committed suicide. The information relied upon by the petitioner, which was obtained by him through RTI was received on 1st July, 2017, and, apparently the application was moved before the Court on 30th March, 2022. the petitioner intends to examine the witnesses to support his defense that, deceased had committed suicide. There is no debate that application under Section 311 of Cr.P.C. could be moved any stage before the conclusion of trial. However, the Court needs to consider whether such application can be entertained and relief of calling or recall of witness, can be granted. On perusal of the impugned order dated 30th March, 2022, it can be seen that the said order has been passed by giving detailed reasons for rejecting the relief sought by the petitioner. I do not find any reason to deviate from the view taken by the learned Sessions Judge, Greater Bombay. Hence, no case is made out for entertaining this petition. The petition is dismissed and disposed of accordingly.

(PRAKASH D. NAIK, J.)