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

WRIT PETITION NO.3635 OF 2022

Preetha Babukuttan

... Petitioner

V/s.

The Central Bureau of Investigation
& Anr.

... Respondents

Mr. Sameer P. Nangre for the petitioner.

Mr. Ahiten Venegaonkar with Mr. Bharat Mirchandani
for respondent no.1/CBI.

Mr. A.R. Patil, APP for respondent no.2/State.

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CORAM : AMIT BORKAR, J.

DATED : OCTOBER 11, 2022

P.C.:

1. The petitioner by way of present petition under Article 227 of the Constitution of India is challenging orders dated 20th September 2022 and 28th September 2022 passed in C.B.I. Special Case No. 65 of 2015 pending on the file of the learned Special Judge, Mumbai. By the impugned order, the learned Special Judge rejected application of the petitioner for recalling of PW-13. The learned Special Judge by the impugned order rejected the application on the ground that the date was fixed as per convenience of the learned advocate for the accused and the reason for adjournment that the advocate of the accused is busy before another Court cannot be a ground for adjournment.

2. On perusal of the reasons, it appears that as stated in the impugned order the reason of advocate being busy in another Court cannot be a ground for seeking an adjournment; however, considering the nature of accusations against the accused and the valuable right of the accused to cross-examine the witness is being taken away by the impugned order. In my opinion, the learned Special Judge should have allowed the application, subject to imposition of costs. It is well settled that for the mistake of an advocate, the litigant should not suffer. Therefore, in my opinion, interest of justice would be met if PW-13 is recalled and his cross-examination is conducted on 10th and 11th November 2022.

3. Hence, following order:

- a) The impugned order dated 20th September 2022 passed by the learned Special Judge, Court No. 53, Greater Mumbai, is quashed and set aside;
- b) Application below Exhibit 128 is allowed, subject to payment of costs of Rs.5,000/-;
- c) It will be open for the accused to file an appropriate application seeking copies of the documents which he may require for cross-examination of PW-13 before the learned Special Judge.

4. Since the accused is permitted to cross-examine PW-13, the learned Special Judge shall defer examination of Investigating Officer on any date after 11th November 2022.

5. Rule is made absolute in these terms. No costs.

(AMIT BORKAR, J.)