

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.791 OF 2022

1. Sunil s/o Gulabrao Thakare
Aged 54 years, Occ: Agriculturist,
 2. Ganesh s/o Gulabrao Thakare
Aged 50 years, Occ: Agriculturist,
 3. Sudhir s/o Gulabrao Thakare
Aged 48 years, Occ: Agriculturist,
All R/o Mahuli (Jahagir), Tq. & Dist. Amravati
- ... PETITIONERS**

---VERSUS---

State of Maharashtra,
Through Police Station Officer, Police
Station Mahuli, Dist. Amravati

...RESPONDENT

Shri P.R. Agrawal, Advocate for petitioners.
Shri A.R. Chutke, APP for respondent.

CORAM : G.A. SANAP, J.
DATED : DECEMBER 14, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally at the admission stage with the consent of learned advocates for the parties.
2. The order challenged in this petition is dated 11.10.2022 passed by the learned Special Judge granting the application made

by the investigating officer for conducting “Psychological Evaluation Test” of the accused persons. It is to be noted that after investigation ‘A’ Summary was filed on 26.06.2021. Before final decision on the ‘A’ Summary, the investigating officer made an application seeking permission to conduct the Psychological Evaluation Test of the accused persons. The application was made on 11.10.2022. The learned Special Judge by one line order allowed the said application without recording the reasons or without recording his satisfaction. It is pertinent to note that the accused, who were directed to undergo the test, were not heard in the matter. The accused being aggrieved by this order have approached in this petition.

3. I have heard the learned advocate for the petitioner and learned Additional Public Prosecutor for the respondent/State. Perused the record and proceedings.

4. It is undisputed that the accused were not heard by the learned Special Judge before passing the order. The order passed by the Special Judge may have serious repercussions and cascading effects on the petitioners. It was therefore necessary to hear the petitioners/accused before passing the order. The learned Special

Judge has not stated even the reason for not granting an opportunity to the accused to reply to this application. In my view, therefore, this order cannot be allowed to stand, as it has caused prejudice to the accused. The learned Special Judge, on the basis of the vague application made by the investigating officer, thought it fit to have some material on record to pass the final order on the 'A' summary submitted by the investigating officer. In my view, therefore, the order is required to be set aside.

5. Perusal of the application made by the investigating officer seeking permission to conduct test would show that it is as vague as vagueness could be. Therefore, in my view, if in exercise of this kind was necessary then it would have been by application of mind. The exercise by making vague application was half hatted exercise. In my view, in order to do complete justice, besides, setting aside the order, it would be necessary to grant liberty to the investigating officer to make a proper application with reasons in support of the prayer. Accordingly, I pass the following order:

ORDER

- i. The writ petition is allowed.
- ii. The order dated 11.10.2022 passed by the learned Special

Judge is set aside.

iii. Liberty is granted to the investigating officer to make a proper application supported by reasons and documents for making such prayer before the learned Special Judge within a period of two weeks from today.

iv. The learned Special Judge shall grant an opportunity of hearing to the accused and decide the same in accordance with law.

Rule made absolute in above terms.

JUDGE

Wagh