

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

CRIMINAL WRIT PETITION NO.478 OF 2023

**PRAKASH @ BITTYA VISHWAMBHAR KSHIRSAGAR
VERSUS
THE STATE OF MAHARASHTRA**

Mr. S. S. Gangakhedkar, Advocate for the petitioner
Mrs. G. L. Deshpande, APP for the respondent/State

**CORAM : R. M. JOSHI, J.
DATE : 28th JUNE, 2023**

P.C. :-

1. This petition takes exception to order dated 21/02/2023 passed below Exhibit 1 in Sessions Case No. 106/2021 directing the procurement of blood samples of accused for DNA profiling and comparison of other biological samples collected in the crime.

2. Learned counsel for the petitioner states that having regard to the nature of offence the collection of blood samples for DNA profiling is not required. He further states that since the accused was behind bar the no objection given on his behalf cannot be treated as voluntary. When this Court has expressed view that since already blood samples are obtained it could be open for the petitioner to raise the objection with regard the legality of this order at the relevant time before the trial Court itself, learned counsel for petitioner seeks liberty accordingly.

3. Petition is disposed of with liberty to the petitioner to raise the issue about the legality, necessity and propriety of the obtainment of the blood samples in the instant case and consequences thereof.

4. The record further indicates that there is no cross order passed by the learned Sessions Judge. Having regard to the fact that it is right of the accused to get fair opportunity to defend himself, and in the interest of justice order dated 07/02/2023 of no cross examination on behalf of accused deserves to be set aside.

5. Learned counsel for the petitioner, on instructions, undertakes to proceed with trial without seeking any adjournment. In view of this impugned order dated 07/02/2023 is set aside. Trial Court to permit the defence to cross examine witness No.2. In case of any dilatory tactics adopted by the defence, it is open for Trial Court to pass appropriate orders in accordance with law. Petition stands disposed of in above said terms.

(R. M. JOSHI, J.)

ssp