

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.933 OF 2023

1. Uttam Ganpat Sumbre  
age 54 years, occ. Sevice  
r/o Pimpalgaon Rotha, Tq. Parner  
Dist. Ahmednagar
2. Namdeo Bappasaheb Jarange  
age 49 years, occ. Service  
r/o as above.
3. Bhikaji Shankarrao Garkal  
age 50 years, occ. Service  
r/o Takli Dhokeshwar, Tq. Parner  
Dist. Ahmednagar

Petitioners

Versus

The State of Maharashtra  
Through its Kotwali Police Station  
Ahmednagar

Respondent

Mr. S. S. Jadhavar, Advocate for the petitioners.  
Mr. S. N. Morampalle, APP for the State.

**CORAM : R. M. JOSHI, J.**  
**DATE : 27<sup>th</sup> JULY, 2023.**

**JUDGMENT :**

1. Rule. Rule made returnable forthwith.
2. By consent, heard finally at admission stage.

3. Petitioners are challenging order dated 13<sup>th</sup> April, 2023 passed by learned Sessions Judge below Exhibit 25 in Sessions Case No. 179/2015 wherein application for recalling of PW 1 was refused.

4. It is the contention of learned counsel for the petitioners that petitioners are facing trial for the offence punishable under Section 306 of the Indian Penal Code. It is his contention that during cross-examination of PW 1 Pramod, no question was asked pertaining to the statement made by him under Section 161 of the Code of Criminal Procedure. It is contended that by no stretch of imagination, it can be said to be filling up a lacuna. According to him, it is the right of the accused to get fair opportunity to defend himself. Learned APP opposed the petition.

5. Perusal of the record placed before the Court clearly indicates that statement of PW 1 Pramod was recorded under Section 161 of the Code of Criminal Procedure. Needless to say that it is the right of the accused to defend himself and all fair opportunities must be given to him for that purpose. Though the application filed before the learned Sessions Judge does not specifically describe the question in respect of which further cross-examination is required,

learned counsel for the petitioners makes a statement on instructions that such cross-examination would be restricted to the statement of PW 1 Pramod recorded under Section 161 of the Code of Criminal Procedure. Prima facie perusal of the said statement and the First Information Report shows that the cross-examination of the informant/PW 1 is just and necessary for the effective defence of the accused. In such circumstances, the impugned order is set aside.

6. Learned Sessions Judge to permit learned counsel for the petitioners to cross-examine PW 1 only to the aforesaid extent. In order to ensure that there is no further delay in the decision of the trial, the learned Sessions Judge to complete additional cross-examination of PW 1 Pramod within a period of four weeks from today.

7. In view of aforesaid directions, petition stands disposed of. Rule made absolute.

( R. M. JOSHI)  
Judge

dyb