

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

CRIMINAL WRIT PETITION NO. 1721 OF 2022

Vishwambhar Marotirao Kadam
and another

.. Petitioners

Versus

The State of Maharashtra
Through I. O. Ardhapur Police Station
Tq. Ardhapur, Dist. Nanded.

.. Respondent

Mr. Vaibhav B. Kulkarni, Advocate for the Petitioners.
Mr. P. N. Kutti, APP for Respondent.

CORAM : KISHORE C. SANT, J.

DATED : 17th FEBRUARY, 2023.

P. C. :-

. Heard learned advocate for the petitioners and learned A.P.P. for State.

2. The petitioners are challenging the order dated 08.08.2022 passed by the learned Additional Sessions Judge, Nanded in Special Case (Atrocity) No. 26/2016. The learned Additional Sessions Judge by order dated 08.08.2022 rejected the application filed by the accused for allowing them to cross-examine PW-6 and it is treated that cross is completed as the party in person has taken cross-examination of PW-6 in Special Case (Atrocity) No. 26/2016.

3. It is the case of the petitioners that on the relevant date when the complainant-witness was examined, their learned advocate could not cross-examine the witness because of personal difficulty. Now, it is treated that the cross-examination is completed.

4. The prosecution filed its say stating that the learned advocate for the accused was knowing that the witness is present and would be examined. It was necessary for him to cross-examine the witness on that date itself. Sufficient opportunity is given, however, it is the accused who could not avail opportunity. The learned Trial Court, however, passed an order.

5. The petitioners submit that the learned advocate was not present on the date and therefore, he could not complete the cross-examination. The valuable right of the petitioners is taken and that would cause serious prejudice to them.

6. Learned A.P.P. vehemently opposes the petition. He submits that on 11.07.2022 the witness was examined by the prosecution. The accused have filed an application for recall of witness for cross-examination wherein, the reason is assigned that because of heavy work and personal difficulty the learned advocate was not in a position to conduct cross-examination on that day. Further, he points out that

thereafter the accused himself cross-examined the witness by producing on record a copy of evidence of PW-6. He prays that accused person had conducted cross-examination in person. He further submits that in the petition some different reason is now assigned as to why learned advocate could not conduct the cross-examination. The learned A.P.P. submits that the petitioner No. 2. is absconding.

7. Considering the fact that, certainly, it can be said that it is the fault of the accused or the learned advocate in not remaining present and not cross-examining the witness. However, considering that, it is right of the accused to get fair opportunity to defend their case, one chance needs to be given to the accused. It is thus, some condition would be imposed.

8. The criminal writ petition is allowed in terms of prayer clause (C) subject to cost of Rs. 10,000/- (Rs. Ten Thousand only) to be deposited in the Trial Court within a period of two (02) weeks from today.

9. It is made clear that, the order is conditional and unless the amount is deposited by the accused/petitioners, this order will not take effect. The amount deposited be transferred in the account of District Legal Services Authority, Nanded.

10. The petitioners shall not seek any unnecessary adjournments and shall not try to prolong the trial. The trial be expedited as far as possible and be completed within a period of six (06) months from today.

11. The criminal writ petition stands disposed off.

(KISHORE C. SANT, J.)

PS.B.