

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

CRIMINAL WRIT PETITION NO.1073 OF 2023

Kajol Sanjeev Basantani

.... Petitioner

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Mr. A. M. Saraogi, Advocate for Petitioner.
- Mr. M. G. Patil, APP for the State/Respondent No.1.
- Mr. Ashok Singh, Advocate for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 09th JUNE, 2023

P.C. :

1. Heard Mr. A. M. Saraogi, learned counsel for the Petitioner, Mr. Ashok Singh, learned counsel for Respondent No.2 and Mr. M. G. Patil, learned APP for the State.

2. The Petitioner has challenged the order dated 04/03/2023 passed by Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai, in C.C. No.1768/PW/2011, whereby the cross-examination of P.W.1

Vijaya Suryavanshi was closed. Ex.B of this application shows that when the examination-in-chief was concluded, the Advocate for the accused was absent and the Court was told that the Advocate would be available at 12.30 p.m. The matter was again called at 12.55 p.m., but learned counsel was not present and therefore the cross-examination was shown as completed.

3. Learned counsel Mr. Saraogi for the Petitioner submitted that the Advocate for the Petitioner was cross-examining a witness in the Court of Metropolitan Magistrate, Ballard Pier, in C.C.No.110/PW/2008 and after attending that matter, the Advocate rushed to the Court at Bandra. However, by that time, the order was passed that the cross-examination was completed.

4. Learned counsel therefore submitted that in the interest of justice and since it was not the fault of the accused, the said order be set aside and an opportunity be given to the Petitioner to conduct the cross-examination of the P.W.1 through

her advocate. Mr. Saraogi submitted that on the next occasion advocate for the Petitioner shall remain present before the Court and shall conduct the cross-examination.

5. Learned counsel for the Respondent strongly opposed this prayer.

6. I have considered these submissions. In the interest of justice and since sufficient cause is made out by the learned counsel for the Petitioner, I am inclined to allow this application subject to the Petitioner depositing cost of Rs.5,000/- in the Trial Court, which can be paid to the P.W.1 Vijaya Suryavanshi.

7. Hence, the following order :

ORDER

- (i) The order dated 04/03/2023 passed in C.G. No.1768/PW/2011, passed by the Additional Chief Metropolitan Magistrate, 9th Court,

Bandra, closing the cross-examination of the P.W.1 Vijaya Suryavanshi, is set aside on the condition of Petitioner depositing Rs.5,000/- (Rupees Five Thousand only) before the Trial Court on the next date.

- (ii) The amount deposited by the Petitioner shall be given to P.W.1.
- (iii) Learned Trial Judge shall permit the Petitioner to conduct cross-examination of P.W.1 Vijaya Suryavanshi through the Petitioner's advocate,
- (iv) With these observations, the Writ Petition stands disposed of.

(SARANG V. KOTWAL, J.)