

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1313 OF 2023

Kamlesh Kumar Mishra s/o
Brijabhooshan Mishra

...Petitioner

Versus

1. The State of Maharashtra
2. Assistant Commissioner of State Tax (D-18)...Respondents

Mr. Brijesh Pathak, for the Petitioner.

Mr. V.B.Konde Deshmukh, A.P.P for the Respondent-State.

Mr. Jitendra Mishra, Special P.P. a/w Vikas Salgia, Mr. Ashutosh Mishra & Mr. Sharma, for the Respondent No.2.

CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.
DATE : 10th APRIL, 2023

P.C. :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent

of the parties and is taken up for final disposal. Learned APP waives notice on behalf of the Respondent-State. Mr. Jitendra Mishra waives notice on behalf of the respondent No.2.

3. At the outset, learned Counsel for the petitioner does not press for prayer clauses (a) and (b) in view of the statement made by the learned Special P.P. appearing for the respondent No.2 that the respondent No.2 will act in accordance with law. As far as prayer clause (c) is concerned, learned Counsel presses for the said prayer clause (c), which reads thus;

“(c) that this Hon’ble Court be pleased to issue Writ of Mandamus or any other appropriate writs, orders or directions under Article 226 of the Constitution of India ordering and directing the Respondents their subordinates, servants and agents to forthwith permit recording of voluntary statements of the Petitioner under Section 70 of the Maharashtra Goods and Service Tax Act, 2017 under the presence of Advocate at visible but not audible distance during interrogation at reasonable office working hours, which may be videographed at the Petitioner’s cost.”

4. Learned Counsel for the petitioner submits that this Court and the Apex Court, has time and again permitted the presence of an

Advocate at a visible, but not at an audible distance and has also permitted the petitioner therein to videograph the recording of his statement. Learned Counsel relied on the orders annexed to the petition which are at 'Exhibit-E' to 'Exhibit-L'.

5. Learned Spl.P.P. appearing for the respondent No.2 states that the respondent No.2 has no objection for the presence of the Advocate at the time of recording of the petitioner's statement provided that he is at a visible distance, but not at an audible distance. Learned Spl.P.P. also has no objection, if the videography is done, however, at the cost of the petitioner.

6. Considering the aforesaid and having regard to the orders annexed to the petition from 'Exhibit-E' to 'Exhibit-L', we allow the petition and as such, permit the petitioner's Advocate to remain present at the time of recording of the petitioner's statement at a visible, but not at an audible distance. We also permit videography of the said petitioner's statement, at the cost of the petitioner. A copy of the said videography shall be handed over to the petitioner after show

cause notice is issued to the petitioner.

7. The Petition is accordingly allowed and as such, disposed of. Rule is made absolute in the aforesaid terms.

8. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.