



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 461 OF 2024

Mohammad Feroz Mohammad Ismail

....Petitioner

VERSUS

The State Of Maharashtra

.....Respondent

.....

Mr. G.L. Deshpande, Advocate for petitioner.

Mr. S.B. Jadhav, APP for respondent.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th MARCH, 2024

ORDER :

1. By this petition, filed under Article 226 and 227 of Constitution of India, petitioner challenges the order dated 11.09.2023, passed by learned Judicial Magistrate First Class, Mudkhed, below Exhibit-73, in Regular Criminal Case No. 57/2017, thereby issuing summons to witness Shaikh Rahim Shaikh Sadat.

2. Petitioner along with four accused persons is facing charge under sections 326, 143, 147, 148, 149, 323, 504, 506 of Indian Penal Code. In support of its case, prosecution has examined four witnesses, including informant. Thereafter, prosecution filed application Exhibit-48 contending that

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informant's brother Shaikh Rahim Shaikh Sadat, who is injured in the incident, his statement was not filed along with charge sheet. His statement may be called from investigating officer. Trial Court issued notice to the investigating officer. Thereafter, prosecution filed application Exhibit-52 stating that in spite of service of notice, investigating officer has not called statement of injured, hence, notice may be issued to him through Superintendent of Police. By filing application Exhibit-73, prosecution sought permission to examine following material witnesses.

1. Mohammad Haji Shaikh Mehboob
2. Shaikh Ashmed Shaikh Maulana
3. Shaikh Rahim Shaikh Sadat
4. Dr. Prashant V. Gunwant.

Trial Court has allowed this application, in spite of objection of petitioner. Petitioner has taken objection for issuance of witness summons to witness Shaikh Rahim Shaikh Sadat.

3. Learned advocate for petitioner assailed the impugned order contending that no reasons are assigned by Trial Court while issuing summons to Shaikh Rahim Shaikh Sadat. Therefore, said order is liable to be quashed and set aside.

4. Heard learned advocate for petitioner and learned APP for respondent. Perused the writ petition memo, annexures thereto and the impugned order.

5. It appears that Shaikh Rahim Shaikh Sadat is brother of informant, who is injured in the incident in question. No prejudice is likely to be caused to petitioner by examining Shaikh Rahim Shaikh Sadat, as petitioner is entitled to cross examine him. Evidentiary value of his statement will be considered by Trial Court at the time of final decision. No prejudice is likely to be caused to petitioner by summoning said witness. Petitioner has failed to make out a case to warrant exercise of extra ordinary writ jurisdiction. Writ petition being devoid of merit, is dismissed.

[NITIN B. SURYAWANSHI, J.]