



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

68 CRIMINAL WRIT PETITION NO. 1279 OF 2024

AVINASH VENKATRAO SHINDE AND ANOTHER  
*VERSUS*  
THE STATE OF MAHARASHTRA

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Advocate for Petitioners : Mr. Gangakhedkar Shailendra S.  
AGP for Respondent-State : Mr. D. J. Patil.

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CORAM : S. G. MEHARE, J.  
DATE : 29.07.2024

PER COURT :-

1. Issue notice to the respondent/s.
2. Learned APP waives service of notice for respondent/s-State.
3. Learned counsel representing the accused had undergone the knee replacement. Hence, he could not cross-examine the Investigating Officer. He was the leading lawyer for the accused. After one and half month, he was recovered and applied to recall the witness. However, the Court recorded findings that there were other lawyers signed the Vakalatanama. Medical treatment certificate of the learned counsel has not been placed on record.

4. Learned counsel for the petitioners would submit that though the medical certificate of knee replacement of the counsel for the petitioners is not placed on record the statement is true and correct. Learned counsel, who was representing the applicant had cross-examined almost all the witnesses. Situation was beyond his control. The accused is languishing behind bars. If the opportunity is granted, trial may be concluded in near future. Now, learned counsel representing the applicant is fit to attend the Court. Hence, to make justice with the accused, opportunity may be granted to cross-examine the Investigating Officer by recalling him.

5. Learned APP would submit that the matter was pending for cross-examination since 2022. There was inordinate delay in concluding the trial at the hands of accused.

6. In reply, learned counsel for the petitioners would submit that in the meantime some petitions were filed before this Court and the proceeding was stayed by this Court. There was no deliberate delay in protracting the trial.

7. It appears from the facts of the case that the accused is not at fault. The lawyer who was representing him was unable to attend the Court due to his knee replacement. The lawyer may not have the reason to make incorrect statement about his

inability. Actually, the lawyer should have make an alternate arrangement, but this appears to have not done in most of the cases. The litigant had a faith in the counsel, who had applied for recalling the witness. The accused is languishing in jail. Hence, to make the justice with the accused if the opportunity is granted, there would be no prejudice or harm to the prosecution. Hence, the following order :

### **ORDER**

- (i) Writ Petition is allowed.
- (ii) The order of the learned Additional Sessions Judge, Nanded, dated 24.06.2024, passed below Exh.169 in Special (Atrocity) Case No.7 of 2018 is quashed and set aside.
- (iii) Application to recall the Investigating Officer for cross-examination is allowed.
- (iv) No cross order has also been called back.
- (v) Counsel for the petitioners should not protract the trial in any way.
- (vi) No order as to cost.

**(S. G. MEHARE, J.)**

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