



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

CRIMINAL WRIT PETITION NO. 290 OF 2025

Ram Dnyanoba Kutwad

.. Petitioner

Versus

The State of Maharashtra

.. Respondent

Shri A. M. Reddy, Advocate h/f Shri Vikrant S. Walse, Advocate
for the Petitioner.

Shri K. K. Naik, A.P.P. for the Respondent/state.

CORAM : SHAILESH P. BRAHME, J.

DATE : 18TH MARCH, 2025.

FINAL ORDER :

. Heard both sides finally at the admission stage.

2. This petition is directed against the order dated 10th July, 2024 passed below Exhibit 47 by the learned Additional Sessions Judge, Latur in Special (Atro) Case No. 15 of 2017. The petitioner is facing prosecution for the offences punishable U/Sec. 376, 342, 506 r/w Sec. 34 of the Indian Penal Code and U/Sec. 3(1)(R)(S)(W) of the S.C. and S.T. (Prevention of Atrocities) Act. When the trial was at the stage of cross examination of prosecution witness No. 1, the petitioner submitted application Exhibit 47 seeking permission to refer photo copy of documents for confronting the witness. By the impugned order said permission was refused.

3. Learned counsel for the petitioner submits that, his client was not having original application dated 09.12.2016 submitted by the victim to the investigating officer and the affidavit executed by her on 16.12.2016. The originals were not given to the petitioner. Those documents are relevant for the cross examination of the witness. Learned counsel would advert my attention to Exhibit – C, which is comprising of both the documents. He would submit that in view of Sec. 60 of the Bhartiya Saksh Adhiniyam, 2023, it was desirable to grant him permission for producing secondary evidence.

4. Per contra, learned Assistant Public Prosecutor would support the impugned order. He would submit that the documents in question are private and contents of documents are doubtful. Those documents have been denied by the witness. In all probabilities the petitioner must be having original. He would further submit that the petitioner failed to make out case as contemplated by Sec. 60 of the Bharitya Saksh Adhiniyam for granting him permission to produce the secondary evidence.

5. Petitioner wanted to confront two documents to the witness, who is the victim during her cross examination namely application dated 09.12.2016 and the affidavit dated 16.12.2016 both executed by the victim. While enlarging the petitioner on bail vide order dated 04.01.2017, these two documents were referred. As the petitioner was having photo copies of those

documents he was soliciting permission to lead secondary evidence.

6. It is not the case of the petitioner that he wants to prove application dated 09.12.2016 and the affidavit dated 16.12.2016. The documents are required to confront the witness and challenge the credibility of the witness. It is permissible during the cross examination to confront the witness with the material which need not be proved by strictly adhering to the provisions of the Bhartiya Saksh Adhiniyam. The documents in question were referred in the order enlarging the petitioner on bail. It is insignificant whether the documents are original or photo copies, as those are to be confronted during the cross examination of the witness. There was no need for the petitioner to solicit any permission to lead the secondary evidence. The reaction of the witness after confronting the document carry significance.

7. In that view of the matter, I find that impugned order is unsustainable. I am of the considered view that the petitioner/accused must be given adequate opportunity to defend himself in the prosecution. I, therefore, pass following order.

O R D E R

- (i) The criminal writ petition is partly allowed.
- (ii) The impugned order dated 10.07.2024 passed below Exhibit 47 by the learned Additional Sessions Judge, Latur in

Special Case No. 15 of 2017 is quashed and set aside.

(iii) The application below Exhibit 47 in Special Case No. 15 of 2017 stands allowed.

(iv) The criminal writ petition is disposed of.

[SHAILESH P. BRAHME J.]

bsb/March 25