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

39 CRIMINAL WRIT PETITION NO. 585 OF 2025

THE STATE OF MAHARASHTRA

....Petitioner

VERSUS

SURAJ BABU LATURE (PATHAN)

.....Respondent

Mrs. A. S. Deshmukh, APP for the petitioner/State.

Mr. Avinash D. Patil, Advocate h/f Mrs. Sayali Tekale, Advocate
for the respondent No.2

CORAM : KISHORE C. SANT, J.

DATE : 01st AUGUST, 2025

P. C.

1. Heard the parties.

2. This writ petition is filed by the State challenging an order dated 10-03-2025 passed by the learned Additional Sessions Judge, Dharashiv thereby rejecting an application below Exh.36 in Sessions Case No. 175/2022 filed by the State.

3. The learned APP submits that all the evidence is completed except evidence of Investigating Officer Shri Bansode.

The Investigating Officer could not remain present for giving evidence on 28-02-2025. He was directed to appear even through Video Conference [VC] on the next date. He could not appear and on the same day the court passed the order of closing evidence of prosecution. The prosecution therefore, filed an application Exh.36 immediately on 10-03-2025 for setting aside the no evidence order and to allow examining the Investigating Officer. The learned Sessions Judge however, rejected the said application. Thus, the petitioner-State appeared before this court.

4. The learned APP points out that immediately within two weeks the court has closed the evidence. The offence is under Section 376(2) (n), 384, 323, 504 and 506 of the IPC. Looking to the seriousness of the allegations it was necessary to grant one more chance to the prosecution to examine the vital evidence i.e. Investigating Officer. The learned court further rejected the application. Thus, the prosecution is deprived of getting proper opportunity to prove his case. On the earlier

occasion even non-bailable warrant was issued against the same witness. However, still it was not executed and no report was submitted. On 07-03-2025 evidence is closed. She submits that the court thus failed to appreciate the gravity of the offence. She prays for setting aside the order.

5. The learned Advocate for the respondent submits that order is rightly passed. The accused is facing trial since 2022. It is about three years the prosecution could not complete the evidence. On 07-03-2025 even statement of the accused under Section 313 came to be recorded and the matter was fixed for final hearing. The learned Advocate for the respondent submits that now clock cannot be set back by calling witness. If the prosecution was really desirous of examining the said witness, the prosecution should have secured the presence of the Investigating Officer. Because of the negligence on the part of the Investigating Officer, the respondent cannot be made to suffer trauma pending trial. Therefore, he prayed for rejection of the petition.

6. Having heard the parties, this court has also gone through the order. It is seen from the order that the Investigating Officer was to be examined on 28-02-2025 for recording evidence. He was also permitted to lead his evidence thorough VC. However, still he did not attend the court proceeding. It is further observed that he kept his mobile switched off. Non bailable warrant was also issued to secure his presence. On 07-03-2025, however, the prosecution failed to secure his presence and even to execute the warrant and on the very day, the learned Sessions Judge passed the order of closing the evidence.

7. Looking to seriousness of the offence, this court finds that the learned Sessions Court ought to have allowed the application of the prosecution and allowed to produce on record the evidence of the Investigating Officer. Non examination of the Investigating Officer would certainly cause prejudice to the prosecution. This court finds that if the said witness has not even responded to the summons of the court, the court may take

suitable action against the said witness. The said witness being a part of the disciplined police force is expected to attend the court to give evidence, which is in fact a part of his duty. It is true that the accused would suffer some trauma since the trial will be prolonged for some period. Looking to the larger interest of the justice administration, it would be desirable to quash and set aside the impugned order. The impugned order dated 10-03-2025 is therefore, set aside. The application Exh.36 in Sessions Case NO. 175/2022 pending in the court of learned Sessions Judge, Dharashiv is allowed. Even if the witness failed to appear before the court, the court may take suitable action against the said witness. The prosecution may also take proper steps for not obeying the summons of the court and not attending the court proceeding.

8. With this, the criminal writ petition stands allowed.

9. The learned advocate for respondent is appointed through the Legal Aid. He/she shall be entitled to receive fees

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as Rs.5000/- to be paid by the High Court Legal Aid Services Sub-Committee.

[KISHORE C. SANT, J.]

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