



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 612 OF 2025

1. Ankush Balaji Jagtap
Age: 22 years, Occu.: Agri.,
2. Balaji Madhav Jagtap
Age: 60 years, Occu.: Agri.,
3. Lahu Balaji Jagtap
Age: 25 years, Occu.: Agri.,
All R/o Her, Tq. Udgir, Dist. Latur

..PETITIONERS

VERSUS

State of Maharashtra
Through Police Inspector
Udgir Rural Police Station

..RESPONDENT

....
Mr. R.C. Dodiya, Advocate for petitioners (appointed)
Mr. S.S. Dande, A.P.P. for the respondent - State
....

CORAM : ABHAY J. MANTRI, J.
DATE : 03rd NOVEMBER, 2025

ORAL JUDGMENT :

1. Rule. The rule is made returnable forthwith. Heard learned counsel for the petitioners and learned A.P.P. for the respondent – State. Perused the impugned order and record as well.

2. By this petition, the petitioners are challenging the order dated 15th February, 2025, passed by the learned Additional Sessions Judge, Udgir, thereby allowing the application (Exh. 146) to issue a witness summons to the witnesses – Sudhakar Kanje and Maruti Landge.

3. Learned counsel for the petitioners vehemently contended that the witnesses, Kanje and Landge, were examined by the prosecution as PW 2 and PW 3 on the point of spot panchanama. He argued that if these witnesses were recalled, then they would fill up the lacunas, which is not permissible in law, and therefore, allowing the said application would cause prejudice to the rights of the petitioners. As such, he urged that the impugned order be quashed and set aside by allowing the present petition.

4. In support of his submission, he relied on the judgment in *State (NCT of Delhi) Vs. Shiv Kumar Yadav and Anr. (2016) 2 SCC 402* and drew my attention to the head note (A) and paragraph nos. 10, 11, 13, 14 and 27 thereof and canvassed that in view of the law laid down by the Apex Court in the said judgment, it would not be appropriate to recall the witnesses to fill up the lacuna.

5. He further pointed out the deposition of those witnesses. During their deposition and cross-examination, the witnesses specifically admitted **to paragraphs nos. 31 and 36**, and pointed out paragraphs nos. 6 and 8 in the cross-examinations of PW 2 and PW 3, respectively. PW-2 admitted that they had not signed anywhere prior to signing on the spot panchanama or even after signing on the spot panchanama, and PW-3, in his testimony, deposed that he did not see the accused persons during the investigation. Therefore, recalling the witnesses would amount to filling the lacuna by the prosecution,

which is not permissible. As such, he urged allowing the application, thereby rejecting the application. (Exh. 146).

6. On the other hand, learned A.P.P. submitted that the order passed by learned Additional Sessions Judge is just and proper and no interference is required in it in the writ jurisdiction. He further pointed out paragraph no. 7 of the impugned order and urged that, although the witnesses were examined earlier, the prosecution had inadvertently failed to refer to the other panchanamas of these witnesses. To prove the other panchanamas, the prosecution wants to call those witnesses afresh. As such, the order passed by the learned Judge is just and proper, and no interference is required in it. Hence, he urged dismissing the petition.

7. On perusal of the record, at the outset, it appears that earlier the witnesses, Kanje and Landge, were examined by the prosecution as PW 2 and PW 3, on the point of spot panchanama. However, at that time, inadvertently, the prosecution failed to refer the other panchanamas to these witnesses or pose questions regarding them; therefore, the prosecution has filed an application (Exh. 146) to recall them. Similarly, on perusal of the application (Exh. 146), it appears that the prosecution wants to examine those witnesses to prove the other documents, particularly the inquest panchanama of the dead body of the deceased, seizure panchanama of the clothes of the deceased, etc. It is pertinent to note that the prosecution does not want to recall them on the point of spot panchanama, but wants to call them to prove

other panchanamas. In such circumstances, it cannot be said that the prosecution wants to recall the witnesses to fill the lacuna, as the prosecution does not intend to call them to re-examine on the point of the spot panchanama.

8. The learned Judge in paragraph nos.5 and 7 of the impugned order has dealt with the contention of learned counsel for the petitioners and held that it is necessary to examine those witnesses to prove the documents other than the spot panchanama and also observed that it will not cause prejudice to the accused as the accused will also have an opportunity to cross-examine those witnesses. As such, I do not find any illegality or perversity in the impugned order to interfere in the writ jurisdiction.

9. It is pertinent to note that the questions were put to the witnesses during cross-examination, and the witnesses have vaguely answered those questions. Learned counsel for the accused/petitioners has not posed specific questions about the execution of the other panchanamas/documents by those witnesses. Therefore, in my view, those admissions would not help the accused's contention that recalling the witnesses would amount to filling the lacuna by the prosecution. On the contrary, it appears that the prosecution wants to recall those witnesses to prove the other panchanamas on which they have signed as panch witnesses; therefore, in my view, it cannot be said that the prosecution wants to recall the witnesses to fill the lacuna. Hence, I do not find substance in his contention. That being the case, the observations

made in *State (NCT of Delhi) vs. Shiv Kumar Yadav and Anr. (2016) 2 SCC 402* are not helpful to the petitioners in support of their contentions.

10. As a result, the petition, being devoid of merit, stands dismissed. Rule is discharged. Inform the learned Trial Court accordingly.

11. Mr. R.C. Dodiya, learned counsel for the petitioners appointed by order dated 06th May, 2025, as such his Fees are to be quantified as per rules.

(ABHAY J. MANTRI, J.)

SSD