



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 211 OF 2023

The State of Maharashtra
Through Sillod Rural police Station
Tq. & Dist. Aurangahad

...Applicant

Versus

1. Jitendra S/o Shalikram Jaiswal,
Age: 28 Yrs., Occu: Business.
R/o: Bharadi Tq. Sillod Dist. Aurangabad
2. Jagdish Harinarayan Jaisrval,
Age: 50 Yrs., Occu: Business,
R./o: As above
3. Narendra S/o Harinarayan Jaiswal.
Age: 38 Yrs., Occu: Business,
R/o: As above
4. Mahendra S/o Shalikram Jaiswal,
Age: 32 Yrs., Occu: Farmer,
R./o: As above
5. Anand Harinarayan Jaiswal,
Age: 45 Yrs., Occu: Farmer,
R./o: As above
6. Ajay Sio Ramnarayan Jaiswal,
Age: 27 Yrs., Occu: Business.
R./o: As above
7. Rajesh S/o Ramnarayan Jaiswal,
Age: 24 Yrs., Occu: Business.
R./o: As above
8. Rajkumar S/o Kamalnaryan Jaiswal
Age 24 Yrs., Occu: Business,
R/o: As above

9. Ravindra S/o Shamnarayan Jaiswal.
Age: 42 Yrs.. Occu: Business,
R/o: As above
 10. Suresh S/o Shivnarayan Jaiswal.
Age: 52 Yrs., Occu: Business,
R/o: As above
 11. Chandrashekar S/o Shamnarayan Jaiswal
Age: 34 Yrs.. Occu: Business
R./o: As above
 12. Shailendra S/o Satyanarayan Jaiswal,
Age: 35 Yrs., Occu: Business
R./o: As above
 13. Sushil S/o Satvanaravan Jaiswal,
Age: 40 Yrs., Occu: Business,
R/o: As above
 14. Abhishek S/o Jagdish Jaisual,
Age: 19 Yrs.. Occu: Education.
R/o: As above
 15. Ritesh S/o Suresh Jaiswal,
Age: 22 Yrs., Occu: Education,
R/o: As above
 16. Mahendra Kamalnarayan Jaiswal,
Age: 35 Yrs., Occu: Business,
R.ro: As above
 17. Ashish S/o Shamnarayan Jaiswal,
Age: 33 Yrs., Occu: Business,
R/o: As above
 18. Satish S/o Shivnaravan Jaiswal.
Age: 48 Yrs., Occu: Business,
R/o: As above
 19. Rajendra S/o Shivnarayan Jaiswal,
Age: Nil, Occu: Business
R/o: As above
- ...Respondents

Ms. Vaishali S. Choudhari, APP for Applicant – State.

Mr. Shrikaht S. h/f Mr. Nilesh S. Ghanekar, Advocate for Respondent Nos. 2, 5, 8, 12, 16, 18, 19

Mr. A. P. Lohade h/f Mr. S. G. Ladda, Advocate for Respondent Nos. 1, 4, 6, 7, 11 and 17.

CORAM : ABHAY J. MANTRI, J.

DATE : OCTOBER 10, 2025

JUDGMENT :

1. The State, being aggrieved by the order dated 29th April 2023, passed by the learned Additional Sessions Judge, Aurangabad, below Exhibit 1 and Exhibit 1110 in Sessions Case No.126 of 2004, whereby it rejected the application for issuance of a bailable warrant to the witness and closed evidence of the prosecution.

2. Heard learned APP for the applicant – State and the learned advocate for the respective respondents. Perused the impugned order and record.

3. At the outset, it appears that on 29th April 2023, the learned APP filed an application for the issuance of a Bailable warrant to witnesses, i.e., the injured witness Eknath Mahajan and the Investigation Officer A. H. Chawariya. The said application was rejected without assigning any reason. I would like to reproduce the said application and order therein as under :

Before the Hon'ble District Judge-05 and Additional

Sessions Judge, At Aurangabad.

Sessions Case No.126/2004

The State Vs. Jitendra and Others

Subject : An application for issuing B. W. to witnesses

Hon'ble Sir,

That, State/ Prosecution respectfully submits as under;

The above matter is posted on today's board. It is submitted that the summons was served on the following witnesses, but the said witnesses did not present before the Hon'ble Court for evidence. It is necessary to issue B.W. to the following witnesses.

- 1) Eknath Vishram Mahajan,*
- 2) I.O. A.H. Chawriya, SDPO, Sillod, Dist. Aurangabad.*

Hence, it is prayed that,

The application may kindly be allowed and B.W. may kindly be issued to the above named witnesses, in the interest of justice and oblige.

Date : 29/04/2023.

submitted by;

sd/-

(R. C. Kulkarni)

Addl. Public Prosecutor, A'bad.

O

Rejected, order passed below Exh. 1.

Sd/-

4. The learned judge passed the order below Exhibits 1 and 1110 that the prosecution's evidence is closed, which reads thus :-

ORDER PASSED BELOW EXH. 1 AND 1110

In S.C.No.126/2004

APP is present when called. Further witnesses are not present. Since 2004 matter is pending. Summons and bailable warrant were issued against the same witnesses for two times. Bailable warrant was served on witness no.1 but absent since two dates. Summons of witness No.2 is returned unserved for want of time. Hence, issuing bailable warrant would

not serve any purpose. Hence, evidence of prosecution is closed. Matter to proceed further.

sd/-

Date : 29.04.2023

(S.M. Kochey)

District Judge-5 and Addl.

Sessions Judge, Aurangabad

5. The learned APP vehemently contended that Eknath Mahajan is the injured witness and Investigation officer Chawriya is a material witness, who had conducted the investigation; however, the learned Sessions Judge, without considering the mandate in *Zahira Sheikh Vs. State of Gujarat and Ors., (2006) 3 SCC 374*, has passed the impugned order and therefore, in view of the observations made in paragraph Nos. 26 and 27 of the said judgment, the impugned order cannot be sustained in the eyes of law and therefore, urged for allowing the application by setting aside the impugned order.

6. Conversely, the learned advocate for the respondent doesn't dispute that the witness Mahajan is the injured witness and Investigation Officer Chawriya is the material witness.

7. Perusal of the impugned order, it appears that the learned Judge rejected the application without assigning any reason in a cryptic manner. In fact, it was incumbent on the learned Additional Sessions Judge to record the reasons for rejecting the application to issue the bailable warrant against the material witnesses. The order passed below Exhibits 1

and 1110 itself indicates that summons of witness No. 2, i.e. Investigation Officer, was returned unserved for want of time. Despite the said fact, the learned judge, in a hasty manner, without giving opportunity to the prosecution, rejected the application on the ground that, despite the service of summons, witness No. 1 remained absent; hence, issuing a bailable warrant would not serve any purpose. In fact, it is a duty cast upon the Court to arrive at the truth by all lawful means. One such means is the examination of witnesses of its own accord when, for certain obvious reasons, either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts. In the case at hand, undisputably, witness No.1 is the injured witness, and witness No.2 is the Investigation Officer, who has conducted the entire investigation. Therefore, both witnesses are material witnesses for the prosecution. Thus, the learned APP has filed the application for issuance of a bailable warrant to the witnesses, and without recording the reasons, the learned Judge has rejected the same; therefore, the said order cannot be sustained in the eyes of law as well as the mandate laid down in *Zahira (supra)*.

8. As a result, the application is allowed. The impugned order passed by the learned Additional Sessions Judge below Exhibit 1 and Exhibit 1110 in Sessions Case No.126 of 2004 is set aside. The learned Judge is requested to reconsider the said application in accordance with the law. The application is allowed in the above terms.

9. Needless to clarify that the matter has been pending since 2004, and the learned Judge shall endeavour to decide the matter as early as possible, in any case, within six months from today.

(ABHAY J. MANTRI, J.)