

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4641 OF 2025

Ganesh Sadashiv Bhosale

... Petitioner

Versus

The State of Maharashtra & Ors.

... Respondents

Mr. Shankar Katkar for the Petitioner.

Mr. A. A. Naik, APP for the Respondent-State.

Coram : M. S. Karnik &
Ajit B. Kadethankar, JJ.

Date : December 3, 2025.

ORAL ORDER (PER: M. S. Karnik, J.)

1. Leave to carry out the amendment is extended till today. Amendment shall be carried out forthwith.

2. By this Petition, the Petitioner prays for directions to Respondent Nos. 1 to 4 to appoint, and to continue the appointment of, a Special Public Prosecutor in the ongoing prosecution/trial before the Trial Court in MCOCA Case No. 1 of 2020, arising out of FIR No. 517 of 2016 registered with Akluj Police Station, which is pending before the learned Special and Sessions Judge, Malshiras, District Solapur.

3. The facts of the case, in brief, are that in the year 2016, an FIR was lodged by one Aniket Jalindar Umbare, the Original Complainant, for offences punishable under Sections 302 and 120-B of the Indian

Penal Code, 1860; Sections 3 and 25 of the Arms Act, 1959; and Sections 3(1)(i), 2(2), 3(3), and 3(4) of the Maharashtra Control of Organised Crime Act, 1999. The matter thereafter proceeded before the Trial Court. During the course of investigation, considering the serious nature of the offences involving organised criminal elements and conspiracy, the State Government appointed a Special Public Prosecutor under Section 24(8) of the Code of Criminal Procedure, 1973, to conduct the prosecution in the said matter.

4. The Petitioner is a star witness in the said case. The learned Counsel submitted that, as the accused were attempting to pressurise the Petitioner in connection with the criminal applications filed by them, the Petitioner was attacked by the relatives and other gang members of the accused. Pursuant to the said incident, FIR bearing C.R. No. 610 of 2023 came to be registered with Akulj Police Station for offences punishable under Sections 307, 341, 120-B and 34 of the Indian Penal Code, 1860.

5. The learned Counsel submitted that there is a serious threat to the life of the Petitioner, as the Petitioner is appearing as a witness in MCOCA Case No. 1 of 2020, in which the trial is presently ongoing before the learned Special and Additional Sessions Judge, Malshiras. The Petitioner had applied for police protection, and the same came to be granted.

6. On 10th June 2025, Mr. Santosh V. Nhavkar, Advocate, who was appointed as Special Public Prosecutor, made an application to the Department of Law and Judiciary seeking continuation of his appointment as Special Public Prosecutor in MCOCA Case No. 1 of 2020.

7. It is the contention of the learned Counsel that the Complainant was under pressure from the accused and, having compromised the matter with them on 13th October 2025, submitted an application to the Law and Judiciary Department seeking appointment of a Regular Public Prosecutor for conducting the case. On 14th October 2025, the Officer of the Law and Judiciary Department issued a notice to Mr. Santosh V. Nhavkar, Special Public Prosecutor, calling upon him to submit his say on the application filed by the Original Complainant seeking substitution of the Special Public Prosecutor with a Regular Public Prosecutor in MCOCA Case No. 1 of 2020. The Petitioner thereafter moved another application dated 16th October 2025 requesting rejection of the Complainant's application and seeking continuation of the appointment of Mr. Santosh V. Nhavkar as Special Public Prosecutor. By order dated 27th October 2025, the District Public Prosecutor, Solapur, directed that the matter be proceeded with by a Regular Public Prosecutor.

8. We find that, by the impugned communication dated 14th October 2025, the State Government cancelled the appointment of the Special Public Prosecutor and directed the Regular Public Prosecutor to conduct the trial. The communication records that, as of 2nd July 2025, there had been as many as 25 hearings, but the Special Public Prosecutor had not remained present on any of those dates.

9. We have heard the learned Counsel for the Petitioner and learned APP for the Respondent–State.

10. Learned APP submitted that, pursuant to the Complainant’s application asserting that the services of the Special Public Prosecutor were no longer required, the District Public Prosecutor directed that the matter be conducted by the Regular Public Prosecutor.

11. We are inclined to interfere with the impugned order dated 14th October 2025. Having realised the seriousness of the offences, the State Government had appointed a Special Public Prosecutor to conduct the trial. The Petitioner, who is a star witness in the ongoing trial, has been granted police protection and has himself lodged an FIR against the accused. We had asked the learned APP to ascertain whether Mr. Santosh V. Nhavkar is willing to continue with the ongoing trial and whether he would remain present on the assigned dates to conduct the trial.

Learned APP submitted that Mr. Santosh V. Nhavkar has no objection to conducting the trial as Special Public Prosecutor and that he will remain present on the dates fixed.

12. By Notification dated 21st November 2025, the appointment of Advocate Mr. Santosh V. Nhavkar as Special Prosecutor was cancelled. By the said notification, which was issued during the pendency of this Petition, the appointment of Mr. Santosh V. Nhavkar was cancelled without assigning any reasons for such cancellation.

13. It is the contention of the Petitioner that the Complainant, being under tremendous pressure from the accused, had sought cancellation of the appointment of the Special Public Prosecutor.

14. In our opinion, having appointed Mr. Santosh V. Nhavkar as a Special Public Prosecutor, if it was brought to the notice of the State Government that he was not diligent in conducting the trial, the State Government could have considered appointing another Special Public Prosecutor, the trial having commenced. However, having realised the importance of appointing a Special Public Prosecutor in a matter of such serious nature where witnesses have been threatened after commencement of trial, without there being any change of

circumstances except for the Complainant making such a request, directing the Regular Public Prosecutor to conduct the trial in place of the Special Public Prosecutor would amount to a serious infirmity affecting the fairness of the trial.

15. It is submitted by the Petitioner that due to the sad demise of the father of Mr. Santosh V. Nhavkar, he could not attend certain dates of hearing, as the trial was being conducted on a day-to-day basis. Learned APP submitted that the fact of the said bereavement was not mentioned in the representation made by Mr. Nhavkar.

16. Be that as it may, the learned APP, on instructions, submitted that Mr. Santosh V. Nhavkar is willing to continue with the trial as Special Public Prosecutor and will diligently appear in the matter.

17. We are of the opinion that there is nothing on record to show that the purpose for which the Special Public Prosecutor was appointed having served, circumstances existed where the trial could be conducted by Regular Public Prosecutor. The trial is still ongoing. In such circumstances, in the interest of ensuring a fair trial not only for the accused but also to the witnesses, the decision to replace the Special Public Prosecutor with a Regular Public Prosecutor should not have been taken in the manner in which it was done.

18. The Notification dated 21st November 2025 is therefore quashed and set aside. Mr. Santosh V. Nhavkar shall continue to conduct the trial as Special Public Prosecutor.

19. Writ Petition is disposed of.

[Ajit B. Kadethankar, J.]

[M. S. Karnik, J.]

**TALLE
SHUBHAM
ASHOKRAO**

Digitally signed by
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