

ANAND
SUDHAKAR
SUDAME

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1053 OF 2025

Kishor Ramarao Patil

.Petitioner

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by ANAND
SUDHAKAR
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Versus

Date: 2025.07.29
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Dr. Gauri Mahesh Karandikar & ors.

.Respondents

Mr. Amey Deshpande, Advocate, for the Petitioner

Mr. Ayush Pasbola, Mr. Shubham Gharbudave i/b. Ms. Mrunal
Bhide, Advocates, for Respondent Nos. 1 & 2

Mr. Ajinkya Jaibhave, Advocate, for Respondent No. 3

Ms. G. S. Rao, Advocate, for Respondent No. 4 - State

CORAM : S. M. MODAK, J.

DATE : 25.07.2025

P. C.

1. Heard Mr. Deshpande, learned Advocate for the Petitioner – husband of the deceased, Mr. Pasbola, learned Advocate for Respondent Nos. 1 & 2 – Accused, Mr. Jaibhave, learned Advocate for Respondent No. 3 and Ms. Rao, learned APP for Respondent No. 4 – State.

2. The trial for an offence under Section 304A of the Indian Penal Code, 1860 (for short “IPC”) is going on before learned JMFC, Nasik. The prosecution has examined in all six witnesses. On 03.10.2024, learned APP who was in-charge of the case has not

attended the Court. The present Petitioner has moved an Application on that date for issuing summons to the following persons :-

- (a) Mr. Sonawane, PSI
- (b) Dr. Shashank Gandhi
- (c) Dr. S. S. Lahade
- (d) Dr. Ravindra Joshi.

3. Learned Magistrate rejected the Application on the same date. It was for the reason that the prosecution is trying to prolong the matter and learned Magistrate was of the opinion that such Applications are filed after recording the statements.

4. On the directions of this Court, Report was called for from the learned APP in-charge of the case. It is taken on record and marked as “X” for the purpose of identification. The report mentions the following facts :-

- (a) Summons was served on Dr. Shashank Gandhi on 25.01.2019 and on 24.01.2019, summons was served on Dr. Ravindra Joshi. Summons was also served on Dr. S. S. Lahade.
- (b) Bailable warrant was issued on 14.07.2023.
- (c) The statements of the Accused were recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) on 23.09.2024.
- (d) On 03.10.2024, the Court has rejected an Application filed on behalf of the prosecution to issue summons to Mr. Sonawane, PSI, Dr. Gandhi, Dr. Lahade and Dr. Joshi.

(e) The Accused has filed written notes of arguments on 19.10.2024.

(f) On 06.12.2024, the prosecution has filed a pursis stating therein that Bombay High Court has granted stay to the trial Court proceedings.

5. Law on the point of role of a private person/victim in Criminal trial needs to be stated. As per the provisions of Section 301 of the Cr. P. C., the first informant can take assistance of the pleader. A private person can instruct the pleader. However, such pleader is required to assist the prosecutor in-charge of the case and even he can file written notes of arguments. In a number of Judgments, role of a private person is interpreted. Even as per the proviso of Section 24(8) of the Cr.P.C., the right of the victim is recognized and he has to assist the prosecutor in-charge.

6. Truly speaking the Petitioner has got no right to request the trial Court for issuing summons just because the learned APP was not available. She could have waited till learned APP in-charge of the case was available. As such, the trial Court has committed no error in rejecting the Application.

7. Mr. Pasbola is worried about the delay in trial as the case is of the year 2008 and his client is a medical practitioner. The record certainly reveals that the prosecution has made an attempt to issue summons to above witnesses. For some or other reason, they have not attended. It is not made clear as to what has happened as to execution of bailable warrant. It is also not made clear that when the

statement under Section 313 of the Cr.P.C. was recorded, whether the prosecution had closed its evidence. Now, learned APP in-charge of the case to take instructions whether the prosecution wants to examine those witnesses. Let learned APP in-charge to decide to examine those witnesses. If decided to examine those witnesses then file necessary Application before the trial Court. If such Application is filed, the trial Court to decide it on its own merits. It is made clear that if the Application is allowed, the prosecution make sincere endeavour to secure their presence and not to delay the trial just because summons is issued. The trial Court is at liberty to pass appropriate Orders, if the trial Court feels that the prosecution is delaying to examine those witnesses.

8. The Petition stands disposed of.

(S. M. MODAK, J.)