

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3120 OF 2024

WITH

INTERIM APPLICATION NO. 512 OF 2025

IN

WRIT PETITION NO.4192 OF 2022

Dipesh Sampat Mehta

.....Applicant

IN THE MATTER BETWEEN

Vivek Prannath Talwar

.....Petitioner

Vs.

State of Maharashtra & Anr.

.....Respondents

Mr. Karan Singh Rajput with Mr. Dharmesh S. Joshi, Ms. Gulnar Khan and Ms. Akshita Vakharia, for the Petitioner.

Mr. Rumi Mirza with Mr. N. M. Nadar, for Intervenor/Applicant.

Ms. M. S. Bajoria, APP for Respondents-State.

CORAM : A. S. GADKARI &

DR. NEELA GOKHALE, JJ.

RESERVED ON : 4TH FEBRUARY 2025.

PRONOUNCED ON : 20TH FEBRUARY 2025.

ORDER:- (Per Dr. Neela Gokhale J.)

1) The Applicant herein seeks to be added as a Respondent in the main Petition as the FIR sought to be quashed in the Petition was claimed to be based on his complaint. The Petitioner in the Original Writ Petition sought quashing of FIR No. 0211 of 2021 dated 23rd December

2021 registered with the Alibag Police Station at Alibag, District: Raigad for the offences punishable under Sections 82 of the Indian Registration Act, 1908. The Petition is still pending before a Co-ordinate Bench of this Court, in view of change in the assignment roster.

2) On 23rd August, 2024, we passed the following order:

“1) At the request of learned Advocate for the Intervenor to enable him to file a separate Application as per the decision of Hon’ble Supreme Court in the case of Sundeep Kumar Bafna Vs. State of Maharashtra & Another reported in 2014(16) SCC 623, stand over to 26th September 2024.

2) Learned A.P.P. waives notice on behalf of the Respondent No.2 also.

2.1) In view thereof, the office objection of non-service upon the said Respondent does not survive.”

3) The Co-ordinate Bench requested the Chief Justice to place the Intervention Applications before a Special Bench (the Bench which passed the order dated 23rd August 2024) being of the view that, since the learned Advocate of the Intervenor was making certain statements not in tune with the directions of this Bench in the Order dated 23rd August 2024, it may be appropriate that the Applications be heard and decided by this Bench. Accordingly, the Applications are placed before us under the directions of the Hon’ble Chief Justice.

4) Mr. Rumi Mirza, learned counsel appearing for the Applicant, seeks to intervene in the Petition by way of these two Interim Applications. Mr. Karan Singh Rajput, learned counsel represents the Original Petitioner and Ms. M.S. Bajoria, learned APP appears for the State.

5) In both the Interim Applications, the Applicant has sought permission to intervene and be added as a Respondent in the Writ Petition. According to him, he is a victim/complainant having filed the complaint dated 29th November 2019 with the Special Inspector General of Police, Konkan Range and the Inspector General of Registration and Controller of Stamps of Maharashtra State and Others. He contends that, it is on his complaint that the impugned FIR has been registered by Smt. Sanjana Sandip Jadhav, an official working at Sub-Registrar of Assurances II, Alibag, District: Raigad.

6) By the Order dated 23rd August 2024, we had stood over the matter to enable the Applicant to file a separate Application relying on a decision of the Apex Court in the case of *Sundeeep Kumar Bafna v. State of Maharashtra, reported in (2014) 16 SCC 623*. Mr. Rumi now has placed reliance upon a Three Judge Bench decision of the Supreme Court in the matter of *Jagjeet Singh and Anr. v. Ashish Mishra, reported in (2022) 9 SCC 321* to buttress his contention regarding the right of a victim to be heard from the stage of investigation till the culmination of the

proceedings in an appeal or revision.

7) We have perused both the decisions of the Apex Court, i.e., in the cases of *Sundeeep Kumar Bafna (Supra)* and *Jagjeet Singh (Supra)*. Paragraph 32 of *Sundeeep Kumar Bafna (Supra)* reads as thus;

“32. The upshot of this analysis is that no vested right is granted to a complainant or informant or aggrieved party to directly conduct a prosecution. So far as the Magistrate is concerned, comparative latitude is given to him but he must always bear in mind that while the prosecution must remain being robust and comprehensive and effective it should not abandon the need to be free, fair and diligent. So far as the Sessions Court is concerned, it is the Public Prosecutor who must at all times remain in control of the prosecution and a counsel of a private party can only assist the Public Prosecutor in discharging its responsibility. The complainant or informant or aggrieved party may, however, be heard at a crucial and critical juncture of the trial so that his interests in the prosecution are not prejudiced or jeopardised. It seems to us that constant or even frequent interference in the prosecution should not be encouraged as it will have a deleterious impact on its impartiality. If the Magistrate or Sessions Judge harbours the opinion that the prosecution is likely to fail, prudence would prompt that the complainant or informant or aggrieved party be given an informal hearing.....”

8) In *Jagjeet Singh (Supra)*, the Supreme Court has held that a ‘victim’ within the meaning of the Code of Criminal Procedure (‘Cr.P.C.’)

cannot be asked to await the commencement of a trial for asserting his/her right to participate in the proceeding. It is observed that such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of proceeding in an appeal or revision.

9) Having considered the factual and settled legal position, the right of the 'victim' to be heard cannot be denied in view of the decision of the Supreme Court in *Jagjeet Singh (Supra)*. At this stage, in this Petition seeking quashing of the FIR, it is not even ascertained as to whether the Applicant is himself 'victim' as defined under the Cr.P.C. or he is a mere witness. A bare perusal of the FIR indicates that, it is lodged by Smt. Sanjana Jadhav, an official working at Sub-Registrar of Assurances II, Alibag, District: Raigad. The Applicant herein at best can be a witness in the trial against the accused. He may be a victim but not the first informant. As considered in *Jagjeet Singh (Supra)*, it is the 'victim' within the meaning of the Code of Criminal Procedure, who has a right to participate in the proceeding. In this view of the matter, we deem it appropriate to permit the Applicant to assist the Public Prosecutor during the hearing of the present Petition and only if it transpires that *firstly*, the Applicant is a 'victim' and *secondly*, the prosecution is likely to fail and the interest of Applicant is likely to be jeopardised then only the Court may permit the Applicant to intervene and advance his submissions in the

Petition.

10) The Interim Applications are accordingly disposed off in the aforesaid terms. At this stage, the Applicant has a grievance that he does not have a copy of the Petition. The learned counsel Mr. Rajput has handed over a copy of the Petition to Mr. Rumi in the Court itself.

11) Registry to place the Petition before the Bench having the said assignment with directions from the Hon'ble Chief Justice.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)

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signed by
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