

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2985 OF 2025

Bhumsing Udaysing Kachhawy

Age: 58 years, Occu: Service

Residing at F-403, New Police Line,

LBS Road, Ghatkopar (West),

Ghatkopar, Mumbai 400 086

...*Petitioner*

Versus

The State of Maharashtra

(Through the Anti-Corruption Bureau)

...*Respondent*

.....
Mr. Satyavrat Joshi a/w Mr. Sumant R. Deshpande i/by Mr.
Samay Pawar, for the Petitioner.

Mr. Ashok S. Gawai, APP for Respondent-State.

.....
CORAM : ASHWIN D. BHOBE, J.

DATE : 29th MAY, 2025
(VACATION COURT)

ORAL JUDGMENT :-

1. Heard Mr. Satyavrat Joshi, learned Advocate for the
Petitioner and Mr. Ashok S. Gawai, learned APP for the
Respondent-State.

2. **Rule.** Rule made returnable forthwith and heard finally by consent of the parties.

3. Petitioner by the present petition filed under Article 227 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "**BNSS**") is before this Court calling in question, the order dated 15.05.2025 passed by the learned Special Judge under the Prevention of Corruption Act, 1988, City Civil and Sessions Court, Mumbai (for short "**learned Judge**") on the Application dated 15.05.2025 for recall of witness, filed by the Petitioner (Accused), at Exhibit 106 in ACB Special Case No.72 of 2014.

4. Petitioner is an accused in ACB Special Case No.72 of 2014 pending before the Court of the learned Judge. Offences charged in the said proceedings are under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

5. Prosecution has examined 9 witnesses in the ACB Special Case No.72 of 2014. Petitioner has examined 3 witnesses in his defence.

6. On 14.04.2025, the matter was fixed for examination of defence witness no.4 Mr. Purushottam Kangaonkar. Records indicate that bailable warrant was issued against Mr. Purushottam Kangaonkar for securing his presence on 14.05.2025.

7. On 14.05.2025, Mr. Purushottam Kangaonkar, was present before the Court. Request for exemption and adjournment was made by the Petitioner. Said request was declined by the learned Judge and consequently, the said witness Mr. Purushottam Kangaonkar was discharged. Matter was accordingly posted on 15.05.2025 for final arguments.

8. On 15.05.2025, Petitioner filed an Application (Exhibit 106) seeking recall of DW-4 Mr. Purushottam Kangaonkar, under Section 311 of the Code of Criminal Procedure (for short “Cr.P.C.”). Respondent filed reply dated 15.05.2025 opposing the Application at Exhibit 106.

9. Vide order dated 15.05.2025, the learned Judge has rejected the Application at Exhibit 106 (Impugned Order).

10. Mr. Satyavrat Joshi, learned Advocate for the Petitioner submits that the Petitioner is facing criminal proceedings, having serious penal consequences. He submits that the request for adjournment made on 15.05.2025 was on account of the Petitioner being hospitalized and for want of instructions from the Petitioner to proceed with examination of the defence witness (DW-4, Mr. Purushottam Kangaonkar). He submits that the Petitioner otherwise was regular in appearing before the Trial Court and had even examined defence witness nos. 1 to 3. He submits that case for recall was made in the Application at Exhibit 106. He submits that the learned Judge could have put the Petitioner to terms by even imposing cost and afforded an opportunity to examine the said defence witness (DW-4, Mr. Purushottam Kangaonkar), which according to him, was a crucial witness in the case and whose deposition would enable the Court to find out the truth and render a just decision. He submits that the Petitioner had made out a case for considering the request made by the Petitioner vide Application at Exhibit 106 filed under Section 311 of Cr.P.C. He submits that prejudice and irreparable injury

would be caused to the Petitioner if the Petitioner is denied the opportunity to examine DW-4.

11. Mr. Ashok S. Gawai, learned APP for the Respondent, submits that the impugned order is a reasoned order. He submits that the learned Judge has found that the request for recall as made by the Petitioner, if accepted, would unnecessarily prolong the hearing of final arguments and disposal of the case. Learned APP submits that the impugned order requires no interference. Mr. Ashok S. Gawai, learned APP for the Respondent-State, however, fairly concedes that the offences charged against the Petitioner have penal consequences qua the Petitioner.

12. From the rival contentions of the parties, the point for determination is whether the Petitioner was entitled for an opportunity to examine DW-4 (Mr. Purushottam Kangaonkar) and consequently, the said witness was required to be recalled?

13. Reasons given by the learned Judge for dismissing the Application at Exhibit 106 are recorded in Paras 3 to 7 which

are transcribed hereinbelow:

“3. Upon perusal of the roznama of the proceeding, it appears that the witness summons on request of the accused by order below Exh. 92, application filed by him on 24.04.2025 were issued and it is reported on 05.05.2025 by Anil Gherdikar, Additional Deputy Commissioner of Police-1 by Exh.93 that the said defence witness had been informed telephonically about the witness summons issued for securing his presence but he had informed his inability to appear since he had travelled to Mysore, State of Karnataka for attending last rituals of his relatives. Since Bailable Warrants were issued by Order dt.05.05.2025 below Exh.95, application filed by defence and again the matter was fixed on 09.05.2025 when by reports filed below Exh.95 and Exh.96, it was informed by the serving machinery that DW-4 Rajnish Tailor alias Purushottam Lingojirao Kangaonkar was untraceable at his given address. Therefore, again on application of defence at Exh.100, Bailable Warrant was issued against DW-4 Shri Purushottam Lingojirao Kangaonkar since it was informed that it was the correct name of Shri Rajnish Tailor.

4. In compliance to the issuance of Bailable Warrant, DW4 had executed bail bonds on execution of bailable warrant upon him and he remained present before the Court on 14.05.2025.

5. However, the accused remained absent on the ground that he has been hospitalized and his learned Advocate sought exemption from his personal attendance by moving application at Exh. 101. It was allowed on condition that no adjournment shall be sought in absence of the accused. However, Ld. Advocate Shri Sumant Deshpande of the defence expressed his inability to examine the said witness on the ground of want of

instructions from accused.

6. It is evident that the accused was almost regularly present during the trial and more particularly when his statement under Section 313 of Cr.P.C. was recorded and he had moved applications at Exh. 91 and Exh. 92 for examination of defence witnesses and while furnishing the details of the purpose and the points for which the said witnesses were sought to be examined. The accused was present on 05.05.2025, 09.05.2025 when the DW-1 to DW-3 were examined by the defence and steps were taken for securing presence of DW4. It has to be inferred that the application for securing presence of DW-4 for being examined in defence, would certainly have been moved by the Ld. advocates for the accused upon his instructions and steps also for securing their presence must have been taken upon his instructions like the applications for seeking exemption from his personal attendance have been moved on his instructions. Therefore, the ground for seeking recall of DW-4 now when the witness was discharged in the presence of the Ld. Advocate for defence, does not appear to be bonafide. There appears no reasonable justification and satisfactory ground for recalling DW-4 when he has been discharged at the instance of the defence.

7. In such circumstances, the request for recall of DW-4 cannot be accepted as it would unnecessarily prolong the hearing of final arguments and disposal of the case. Hence, following order is passed:

ORDER

Application for recall DW-4 Shri Purushottam Kangaonkar at Exh. 106 is rejected.”

14. Perusal of the impugned order would indicate that the

learned Judge has opined that if the request of the Petitioner is accepted, it would unnecessarily prolong the hearing of final arguments and disposal of the case. Though the learned Judge would be right in the context of delay in disposal of the proceedings, however, the learned Judge ought to have tested the Application at Exhibit 106 in the context of the provisions Section 311 of Cr.P.C. (Now 348 of BNSS).

15. Impugned order records the Petitioner being regularly present during the trial; upon his statement under Section 313 of Cr.P.C. being recorded, Petitioner having taken steps to file Application for summoning defence witness (4 witnesses); and Petitioner being present at the time of examination of 3 witnesses viz., DW-1 to DW-3. Perusal of the impugned order would indicate that the delay in securing the presence of DW-4 since the month of April, 2025 till 14th May, 2025, are not attributable to the Petitioner.

16. Reasons given for the absence of the Petitioner before the Court on 14.05.2025 and the need for adjournment, was on account of the Petitioner being hospitalized. Petitioner

being hospitalized is not in dispute. Learned Judge has rejected the request for adjournment on 14.05.2025 on the ground that there was no reason for the learned Advocate for the Petitioner not to proceed with the examination of DW-4 (Mr. Purushottam Kangaonkar). Learned Judge perhaps may be right in observing that the learned Advocate for the Petitioner could have proceeded with the examination of DW-4, however, considering the nature of the allegations and the offences charged against the Petitioner, the request made by the Petitioner for an adjournment, cannot not be said to be unreasonable. Petitioner's presence during the examination of DW1 to DW3 is found mentioned in the impugned order. Expectation of the Petitioner to remain present during the course of examination of the witness DW-4, who according to the Petitioner is a crucial witness, appear to be a bonafide expectation.

17. Petitioner by the Application at Exhibit 106 sought for indulgence of the learned Judge by invoking provisions of Section 311 of Cr.P.C. It is a matter of record that the Petitioner was diligent in taking steps to summon the said witness DW-4.

According to the Petitioner, examination of the said witness DW-4 is necessary and would enable the Court to find out the truth to render a just decision. It is further the contention of the Petitioner that grave prejudice would be caused to the Petitioner if the said witness DW-4 is not examined.

18. It is trite law that powers conferred under Section 311 of Cr.P.C. should be invoked by the Court to meet the ends of justice. Power is to be exercised only for strong and valid reason and it should be exercised with great caution and circumspection, considering the facts and circumstances of each case. Power under this provision shall not be exercised if the Court is of the view that the Application has been filed as an abuse of process of law (*See Swapan Kumar Chatterjee V/s. Central Bureau of Investigation*,¹).

19. In the case of *Satbir Singh V/s. State of Haryana and Others*², the Hon'ble Supreme Court after referring to its various decisions in respect of provision of section 311 of Cr.P.C., had permitted recall of a witness in the said case.

¹ 2019 14 SCC 328

² 2023 SCC OnLine SC 1086

20. Having considered the matter, in the facts and circumstances of the present case, the request for recall of DW-4 was justified. Recall of the witness (DW-4) would not prejudice the Respondent, as the Respondent would have an opportunity to cross-examine the said witness. Petitioner has made out a case to exercise discretion under section 311 of Cr.P.C.

21. Proceeding before the learned Judge are pending from the year 2014. Learned APP states that the prosecution has completed their arguments in ACB Special Case No. 72 of 2014. He, therefore, submits that in the event this Court is inclined to show indulgence to the Petitioner, then the Petitioner is required to be saddled with cost as the disposal of the proceedings would be further delayed for reasons attributable to the Petitioner.

22. For the reasons recorded herein above, this **Criminal Writ Petition is allowed**, impugned order dated 15.05.2025 passed by the learned Judge on the Application dated 15.05.2025 filed by the Petitioner at Exhibit 106 on the file of

ACB Special Case No. 72 of 2014 is set aside, consequently, the Application at Exhibit 106 is allowed, subject to payment of cost of Rs. 25,000/-.

23. Mr. Joshi, learned Advocate for the Petitioner on instructions undertakes to deposit the cost of **Rs. 25,000/-** in the Registry of this Court within a period of one week from today and file the receipt of such payment before the learned Judge. Mr. Ashok Gawai, learned APP for the Respondent-State consents to transfer the said amount for a public cause.

24. Upon the deposit of Rs. 25,000/-, the Registry of this Court shall transfer **Rs. 15,000/-** to the **High Court Employees Medical Welfare Fund at Mumbai** and **Rs.10,000/-** to the **Central Police Welfare Fund**. The details of these Accounts are as under:

(i) The High Court Employees Medical Welfare Fund at Mumbai

Account No. : 000120110001337
Bank : Bank of India
Branch : Mumbai Main
IFSC Code : BKID0000001

(ii) Central Police Welfare Fund

Account No : 914010029005759
Bank : Axis Bank Limited

Branch : Worli, Mumbai (M.H.), Mumbai – 400 025
IFSC Code : UTIB0000060

25. Mr. Joshi, learned Advocate for the Petitioner on instructions from the Petitioner states that the Petitioner would take the required steps to issue summons to the said witness DW-4 (Mr. Purushottam Kangaonkar), by filing the required Application on 02.06.2025 in ACB Special Case No.72 of 2014. He further undertakes not to seek any adjournment on the date fixed by the learned Judge for examination of DW-4 (Mr. Purushottam Kangaonkar). He further assures the Court that the Petitioner would cooperate in early disposal of the ACB Special Case No. 72 of 2014. Statement accepted.

[ASHWIN D. BHOBE, J.]