

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANAND
SUDHAKAR
SUDAME

WRIT PETITION NO. 3854 OF 2025

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Date: 2025.07.25
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Jitendra Singh Ranjit Singh

.Petitioner

Versus

The State of Maharashtra

.Respondent

Mr. Mohd. Shayam Usmani a/w. Ms. Sakshi Baadkar, Advocates, for the Petitioner

Mr. H. J. Dedhia, APP, for the Respondent – State

SI – Ghag – Pairavi Officer present

CORAM : S. M. MODAK, J.

DATE : 21.07.2025

P. C.

1. Heard Mr. Usmani, learned Advocate for the Petitioner who is the under trial prisoner and Mr. Dedhia, learned APP for the Respondent – State. He has been tried for the offences punishable under Sections 302 and 307 of the Indian Penal Code, 1860 and under Sections 37(1) and 135 of the Maharashtra Police Act, 1951. As of now, 17 witnesses were examined. **The issue in this Petition is whether to permit the Petitioner to re-call PW.1, PW.2 and PW.3 for cross-examination.**

2. Request was made before the trial Court. However, it was rejected on 14.02.2025. The Order reads thus :-

“Order passed below Exh. 90

Read the application and say. Perused the record. Heard both the sides. PW-01 is reported to have now expired as it is orally submitted by the Ld. APP. Moreover, testimony of PW-01, 2 and 3 reveals that due/sufficient opportunity was granted to the defence and accordingly the witnesses are cross-examined. Change of advocate is not ground for recall. PW-03 is cross examined by the same Adv. Shri Usmani. Any ground is not made out for recall of witness. Hence, rejected.”

3. The grievance is there is no document to justify the death of PW.1. Submission was made by the learned APP about his death. No APP will make submission unless having concrete information from the police. Let the prosecution to produce the material showing death of PW.1. The trial Court also to issue directions for producing the material about his death.

4. A copy of the Application praying for re-call is not annexed to the petition. PW.2 and PW.3 were examined on the following aspects :-

(a) **PW.2 is the Head Constable** – Mr. Rahul Tulshiram Dhole attached to the Nagpada Police Station. On the relevant date, he was on patrolling duty. He visited City Central Mall, Belasis Road, Nagpada on receiving information that a person was assaulted by the people and he was holding a knife. When he reached there, he saw 30-40 persons have caught one person holding a knife. The said person was none other than the present Petitioner. Mr. Rahul Dhole was not the witness to the incident of assault. He along with others

took the knife from the Accused and took him to the Nagpada Police Station and handed over him to Mr. Manjrekar, API. He is, however, examined.

5. **PW.3 is one Mr. Mohd. Shahbaz Hanif Merchant.** He is a private person. On the **date** of the incident, he was waiting for taxi near Nagpada junction. He heard noise “pakdo pakdo”. He tried to **caught** hold the said person. That person assaulted the witness.

6. The case put up by the Accused is of denial and assault being made by another person. This can be noticed from the cross-examination PW.2 and PW.3. **I do not find any justification for calling PW.3.** It is true that the prosecution has to prove the commission of offence beyond reasonable doubt. There is no burden on the Accused unless otherwise. When cross-examination of PW.3 is perused, apart from putting suggestions, certain questions were put to doubt the veracity and his presence at the spot. No ground for re-calling the witnesses is made out.

7. **When cross-examination of PW.2 – Mr. Rahul Dhole,** Head Constable is perused, I find cross-examination is only in the form of putting suggestions. I do not think that PW.2 is sufficiently cross examined in order to test his veracity.

8. The submission is made that they want to re-call PW.2 on the basis of the answers given by Mr. Manjrekar, API. This is not permissible because the witness who is already examined cannot be confronted on the basis of the answers given by the witness examined subsequently.

9. Reliance is placed on the observations of the Hon'ble Supreme Court in the case of *Rajendra Prasad vs. Narcotic Cell*, reported in *(1999) 6 SCC 110* in paragraphs 7 and 8 and in the case of *P. Sanjeeva Rao vs. State of Andhra Pradesh*, reported in *(2012) 7 SCC 56* in paragraphs 18 and 19.

10. The Accused should be given an opportunity to challenge the testimony of witnesses and if there is a prayer for re-calling the witnesses, the Court has to consider it magnanimously. It is pertinent to note that serious offence is involved and the Accused is the under trial prisoner. PW.2 is the material witness who has taken the Accused to the police station along with the knife. Hence, I am not inclined to allow the Writ Petition only in respect of PW.2. Hence, the following Order.

O R D E R

- (i) The Petition is partly allowed.
 - (ii) The Order dated 14.02.2025 passed by the learned Additional Sessions Judge, Mumbai in S. C. No. 148 of 2020 rejecting the request for re-calling of PW.2 is set aside.
 - (iii) The Petitioner is permitted to cross examine PW.2 again and the prosecution is directed to secure presence of PW.2;
 - (iv) It is made clear that cross-examination has to be restricted only to the facts deposed by him and no attempt to cross examine him on the basis of answers given by other witnesses.
11. The Petition stands disposed of.

(S. M. MODAK, J.)