

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Writ Petition No. 4468 of 2025

Rameshchandra Shobhnath Mishra ... Petitioner
V/s.
The State of Maharashtra ... Respondent

Mr. Amin Solkar	Advocate for the Petitioner.
Ms. Sangeeta Phad	APP for the State.
Mr. Gaurav Rathod,	PSI, Vartaknagar Police Station, Thane.

CORAM : S.M. MODAK, J

DATE : 21st August 2025.

ORAL JUDGMENT :

Heard learned Advocate Solkar for the Petitioner-one of the accused in Sessions Case No.142/2018. Also heard learned APP. Copy of this application is not served on the office of Public Prosecutor but when I have heard Mr. Solkar, I find that order needs to be set aside and needs to be remanded to the learned Judge for fresh consideration. Even the learned APP is also of the same view.

2. There are in all six accused who are chargesheeted by Vartak Nagar Police station in a Crime in C.R. No.336/2017. The offences are under Section 307,326,120-B r/w 34 of the IPC and under Sections 4 and 25 of the Arms Act and under Section 37(1) r/w Section 135 of the Bombay Police Act. The Final Form is on Page-

28. Now the chargesheeted accused are facing the trial and the prosecution has also examined certain witnesses that is recorded in Para No.4 of the impugned order. Page Nos.39 and 40 consists of names of one Akash Sahu and Anand Fadtare. They have not been chargesheeted by the police. They have been shown as not traceable.

3. Mr. Solkar has invited my attention to the Charge dated 25th February 2025 on Page No.48. There is a reference of absconding accused Akash Sahu and Anand Fadtare. The trial Court was fully aware that these two accused were not chargesheeted.

4. In the midst of the trial this Petitioner has filed an application concerning accused-Anand Fadtare that he be tried along with this case as per the provisions of Section 223 of Cr.P.C. He has filed this application on the basis of information that he was granted bail by the Sessions Court on 13th April 2018. He wants to suggest that he was arrested and granted bail. **That is why according to him there is possibility of filing of the chargesheet.**

5. On this background the learned trial Court Judge ought to have issued directions to the police to verify whether the chargesheet is filed against the said Anand Fadtare. Instead of doing that the learned Judge rejected the application and also imposed a cost of Rs.3000/- and went to the extent of observing that his liberty would be curtailed if the cost is not paid.

6. **I do not subscribe to this view for two reasons:-**

- (i) It was unjustified in imposing cost of Rs.3000/- and secondly, the learned Judge was too harsh in curtailing bail if the cost is not paid. The law on the point of cancellation of bail is well settled. Considerations for cancellation of bail are different from the consideration for grant of bail. Even prior to cancellation of bail, the concerned accused needs to be heard. When the learned Judge opined that his liberty would be curtailed, it has caused apprehension in the mind of Petitioner. It amounts to exceeding jurisdiction (which is permissible by the settled principles of criminal trial).
- (ii) Secondly, I do not subscribe to the manner in which the learned Judge has decided that application. While filing the application the present Petitioner may be having some intention to delay the trial. But the fact that he has brought to the notice of the Court and **in such an eventuality the learned Judge ought to have verified the factual aspects from the prosecution.** After doing that the learned Judge was at liberty to take appropriate decision. The learned Judge has shown haste in rejecting the application without issuing directions to the prosecution.

7. The relevant provisions of Section 355 of BNSS (Section 223 of Cr.P.C.) are quoted below:-

“(1) At any stage of an enquiry or trial under this Sanhita, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interest of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by an advocate, dispense with his attendance and proceed with such enquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by an advocate, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such enquiry or trial, or order that the case of such accused be taken up or tried separately.”

There is purpose behind incorporating this provision. If the test laid down in those clauses are fulfilled, such persons need to be tried together. The purpose is the Court can give findings on guilt of such person. It has got advantages from various angles. The witnesses can depose at the same time, instead of attending the trial Court on different occasions. It will be easier for the Court to appreciate the evidence simultaneously.

8. In fact while drafting B.N.S.S., the legislatures have taken one step ahead. As per Section 299 of Cr.P.C., Court can record the evidence in absence of accused and can use it subsequently against him. Similar provisions are there in Section 335 of B.N.S.S.. **But there is additional provision.** It is incorporated to avoid further delay in criminal trial. It is incorporated in order to check unscrupulous means by some accused persons to avoid trial and to appear when the remaining trial will be only a farce (that is to say witnesses may not be available). This is incorporated in Section 356 of B.N.S.S.. If the conditions mentioned therein are satisfied, Court cannot only examine witnesses in his absence but it has the effect of waiver of right to be tried. This provision is yet not tested in Court on law.

9. I have quoted this provision only to understand the legislature's intention. I have not made any observation that the provisions of Section 356 of B.N.S.S. can be invoked in present scenario. So the trial Court must consider the intention of legislature in incorporating Section 355 in B.N.S.S. The trial Court while passing impugned order has disregarded the legislative intent.

10. In view of the aforesaid observations, the order needs to be set aside and matter needs to be remanded to the learned Judge. Hence, the following order:

ORDER

(i) The order dated 31st July 2025 passed by the Additional

Sessions Judge, Thane in Sessions Case No. 142/2018 is set aside.

- (ii) The matter is remanded back for fresh consideration.
- (iii) The learned Judge to issue directions to the prosecution to ascertain whether charge-sheet is filed against the wanted accused-Anand Fadtare. After getting the report from the police, the learned Judge is at liberty to decide the application as per merits.
- (iv) Additionally, the learned Judge may also seek the information from the police about filing of the charge-sheet against wanted accused-Akash Sahu.

11. The Writ Petition stands disposed of accordingly.

(S.M. MODAK, J.)