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

CRIMINAL REVISION APPLICATION NO. 399 OF 2025

Ayodhya Ghamandi Rajak

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr. Gaurav Bhawnani, Mayanka SR, Advocate for the Applicant.

Mr. S. V. Gavand Addl. PP for Respondent/State.

CORAM : ASHWIN D. BHOBE, J.

DATE : 17th OCTOBER, 2025.

P.C. :

1. Heard Mr. Gaurav Bhawnani, learned Advocate for the Applicant and Mr. S. V. Gavand, learned APP for the State.

2. By the present Application, filed under Section 397 of the Cr. P C., the Applicant (Accused No.3) has assailed the order dated 16th July, 2025 passed by the Court of the Additional Sessions Judge, Borivali (Div), Dindoshi, Goregaon, Mumbai, by which the opportunity to cross-examine the Investigating Officer (PW-12) at the instance of the Applicant stood closed.

3. Mr. Gaurav Bhawnani, learned Advocate for the Applicant, submits that the Advocate for the Applicant appearing before the

learned Additional Sessions Judge was in difficulties on the date when the matter was listed for cross-examination of the Investigating Officer. He submits that it was only on the said date (i.e. on 20th June, 2025) that the Advocate for the Applicant was in difficulties, otherwise the records of Special Case No.49 of 2021 would indicate the Advocate for the Applicant was regular in his appearance before the Court. He submits that a vital part of the cross-examination has remained. He submits that if the Applicant is not afforded an opportunity to cross-examine the Investigating Officer, grave and serious prejudice would be caused to the Applicant. He submits that the facts of the case at the most would indicate that there was a lapse on the part of that Advocate to appear on 20th June, 2025. He relies on the principle of law that a client should not suffer for the lapse on the part of his Advocate, which principle would be applicable in the present case.

4. Mr. S. V. Gavand, learned APP for the State, submits that on account of the absence of the Advocate for the Applicant on 20th June, 2025, the matter could not proceed, thereby resulting in a delay in conclusion of trial. He fairly submits that the Advocate for the Applicant appeared to be in difficulties and as such was absent on 20th June, 2025.

5. Perused the records with the assistance of the learned Advocates for the parties.

6. Cross-examination of the Investigating Officer (PW-12), was in progress as on 20th June, 2025. As submitted by Mr. Gaurav Bhawnani, Advocate representing the Applicant could not remain present before the Court on the said date due to difficulties of the said Advocate. Advocate for Applicant being in difficulty on 20th June, 2025 is not in dispute. Similarly, no malafides are alleged either against the Applicant or the Advocate for the Applicant, for not conducting the matter proceedings on 20th June, 2025. Right of cross-examination is a valuable right. Applicant who is in custody should not be made to suffer for THE absence of his Advocate on 20th June, 2025. Mr. Gaurav Bhawnani, submits that the Advocate representing the Applicant before the Trial Court, who was absent on 20th June, 2025, was diligent in making an Application seeking recall of the order dated 20th June, 2025 on the immediate next date. Paragraph No. 25(g), of the present Revision Application makes a reference to the issues on which the Advocate for the Applicant intends to cross-examine the Investigating Officer.

7. Considering the facts and circumstances of the present case, this is a fit case to show indulgence to the Applicant and afford an opportunity to the Applicant to cross-examine the Investigating Officer

(PW-12), on the issues as referred to by the Applicant in paragraph No. 25(g) of the present Revision Application.

8. Mr. Gaurav Bhawnani, learned Advocate for the Applicant, assures the Court that if Investigating Officer (PW-12) is recalled, then the Advocate for the Applicant shall remain present on the date fixed and would complete the cross-examination of the Investigating Officer (PW-12) on the date fixed or any other date convenient to the trial Court. Statement accepted.

9. In view of the above, the present Revision Application is allowed. The impugned order dated 16th July, 2025 and the order dated 20th June, 2025 passed by the Additional Sessions Judge, Borivali (Div), Dindoshi, Goregaon, Mumbai, are set aside. Application for recall of the Investigating Officer (PW-12) is allowed. The Additional Sessions Judge, Borivali (Div), Dindoshi, Goregaon, Mumbai, shall as per its convenience fix a date for recalling the Investigating Officer (PW-12) for his cross-examination by the Advocate for the Applicant.

10. Revision Application is allowed in the above said terms. No order as to costs.

(ASHWIN D. BHOBE, J.)