



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL REVISION APPLICATION NO.18 OF 2025

(State of Maharashtra Vs. Prashannajit @ Chotu Parmil Haldhar and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms Swati Kolhe, APP for the State.
Mr. G. Ansari, Advocate h/f Mr. M.N. Ali, Advocate for the non-applicant.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- MARCH 12, 2025.

By preferring this revision, the State has challenged the order dated 27/11/2024 passed by the Additional Sessions Judge and Special Judge, Chandrapur discarding the evidence of PW-43 – Investigating Officer and also the order passed below Exhibit – 522 rejecting the permission to appear through Video Conferencing.

2. The crime No.439/2019 was registered against total 17 accused persons for the offence punishable under Sections 302, 307, 353, 332, 333, 363, 417, 403, 120-B and 201 of IPC read with Section 65(A), 82 and 83 of the Maharashtra Prohibition Act and Sections 3(1)(p), (pp), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999. It was alleged that the accused No.1 Shahjad is a Gang leader of the said gang and there were being illegal liquor businesses in Chandrapur district for pecuniary gain. The accused No.1 directed to the other accused persons, member of the gang

to kill the police officer if the vehicle is restrained by the police, therefore, on the day of incident the liquor vehicle of the accused persons were transporting and upon restraining accused No.2 he has driven the vehicle on the person of the police officer PSI Chhatrapati Chide and committed his murder.

3. While considering the bail application of the accused wherein this Court has directed the Sessions Court to expedite the matter and dispose it of. Thus, this Court has directed the Sessions Judge to dispose of the matter expediting the same. In support of the prosecution, the prosecution has examined total 42 witnesses from 14/08/2023 to 21/10/2024, then matter was fixed for evidence of further witnesses. From 25/09/2024 to 26/09/2024 the PW-43 - Hemrajsingh Rajput/DCP was examined and cross-examination on behalf of the Counsel for accused Nos.9, 10, 12, 13, 15 and 16 was completed. Matter was further put for cross-examination of PW-43. But on 10/10/2024 PW – 43 – Investigating Officer could not attend the Court because he has to join his new posting on 09/10/2024 at Mumbai as well as he was looking after the arrangement of Maharashtra Cyber Head Quarter inauguration, therefore, Special Prosecutor has filed an application for examining the said witness through video conferencing but said application was rejected on 21/10/2024. Due to the assembly elections, on 23/11/2024 the said matter was fixed on 27/11/2024

for cross-examination of PW-43 but witness has not received the summons, and therefore, he could not attend on 27/11/2024. Therefore, the prosecution has filed application vide Exhibit - 522-A for adducing further evidence of PW-43 through video conferencing. It is specifically mentioned that, the said witness has been transferred to Maharashtra Cyber, Mumbai as Superintendent of Police and personally he is in the vehicle and travelling to attend the meeting hence unable to attend, therefore, be permitted to adduce his evidence through video conferencing thereupon the Counsel for accused objected for the same and the application was rejected. Moreover, due to the absence of the witness, the Sessions Judge passed an order and held that the evidence of PW-43 deserves to be discarded.

4. Being aggrieved and dissatisfied with the same, present revision application is filed.

5. Learned APP for the State submitted that the offence is registered under Section 302, 307 and other provisions of the Indian Penal Code. The allegation against the accused is that accused No.1 Shahjad is a Gang leader and in pursuance of the common object of the said gang they have committed the offence and committed the murder of the Police Officer who was investigating the crime against them by driving the vehicle on his person. Thus, the crime is serious in nature. The charge-sheet at

about 3800 pages was filed and there were number of witnesses. In all 42 witnesses are examined by the prosecution from 14/08/2023 to 21/10/2024. Due to genuine reason as PW – 43 was transferred to Mumbai in a Cyber Cell he could not attend the Court, and therefore, his further evidence is not recorded. There is neither an intention to prolong the matter. However, the Sessions Court has not considered the same, and rejected his prayer to appear through Video Conferencing and also held that the evidence is to be discarded which would be against the interest of justice. It is submitted by the learned APP that considering the nature of the offence wherein the serious allegation is levelled against the accused persons, the entire investigation carried out by the PW-43, and therefore, his evidence is utmost importance to prove the charges against the accused persons. If his evidence is discarded, it would cause a prejudice to the State as well as the prosecution, and therefore, the order passed by the Additional Sessions Judge, Chandrapur deserves to be quashed and set aside. She further submitted that now PW-3 will remain present before the Court as and when asked for recording the further evidence.

6. Learned Counsel for the accused strongly objected for the same and submitted that the learned Sessions Court has rightly discarded the evidence as there is consistent absence of the Investigating Officer and due to his conduct the trial is prolonged. The right of the

accused to fair trial and fair cross-examination is a fundamental right, and therefore, no interference is called for and the revision application deserves to be dismissed.

7. I have heard learned Counsel for both the sides. Perused the impugned order as well as the other record. There is no dispute as to the fact that this Court while considering the bail application of the accused directed the trial Court to expedite the trial and dispose it at the earliest. Thereafter 43 witnesses are already examined by the prosecution and PW-43 is the Investigating Officer whose chief examination is already recorded and part cross-examination is already over. The cross-examination on behalf of accused Nos.2, 3, 14 and 17 remained to be carried out. It further reveals from the contents of the revision application that prior to recording of his evidence, he was transferred to the Cyber Cell, Mumbai, and therefore, he could not attend the court proceeding, and therefore, Court has passed the order. There is no dispute as to the fact that being the Investigating Officer it is his duty to remain present since the commencement of the trial till it comes to at its logical end. However, considering the various duties are assigned to the Police Officers, some concession is always given by the Court to remain absent. But the Investigating Officer should not take the disadvantage of the same and they should be interested to proceed with the matter and shall cooperate with the Court to dispose of the trial.

Considering the reasons mentioned in the application appears to be genuine one and he is transferred to Cyber Cell, Mumbai he could not attend the proceeding before the Court. Considering the matter is time bound the Court repeatedly insisted him to remain present and due to his absence the trial is prolonged. However, taking into consideration the reasons mentioned by the Investigating Officer one opportunity is granted to him but he shall remain present before the Court for further cross-examination without seeking any exemption and without assigning any reason. Considering the nature of the offence which is very serious in nature, this opportunity is granted to the Investigating Officer. In view of that, the revision application deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The order dated 27/11/2024 passed by the Additional Sessions Judge and Special Judge, Chandrapur in Special MCOC Case No.113/2020 discarded the evidence of PW-43 – Investigating Officer is hereby quashed and set aside.

(iii) The Investigating Officer – Hemrajsingh Rajput shall remain present on the fix date which would be communicated to

him by the learned Additional Public Prosecutor from the Special Court i.e. Additional Sessions Judge and Special Judge, Chandrapur without fail and without making any excuses.

(iv) On failure to attend on the fix date, the earlier order passed by the Additional Sessions Judge and Special Judge, Chandrapur, will subsist.

8. With this, the revision is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*