



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 510 OF 2026

Shamsundar Narsingrao Naik

VERSUS

The State Of Maharashtra And Another

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- Mr. Satyajit S. Bora, Advocate for the Petitioner
- Mr. D. J. Patil, APP for Respondent No. 1 - State

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CORAM : MEHROZ K. PATHAN, J.

DATED : 21.04.2026

PER COURT :

1. The petitioner (accused) has filed the present petition thereby challenging the order dated 31.03.2026, whereby the application filed by the petitioner under Section 311 of the Code of Criminal Procedure, for calling the witness – Depot Manager / Controller, MSRTC, CIDCO, Sambhajnagar Depot, as a Court witness, came to be rejected by the learned Additional Sessions Judge-3, Jalna, during the course of trial.

2. Learned counsel for the petitioner Mr. Bora submits that the witness i.e. the Controller, MSRTC Depot No.1, CIDCO, Sambhajnagar, is the very first person to whom the victim girl had informed about the alleged incident of molestation and made a complaint. It has also come on record that after receipt of the complaint from the victim girl, the said Controller, MSRTC, Sambhajnagar had inquired into the matter and recorded statements of certain persons. The prosecution has failed to examine the said important witness, namely the Controller, MSRTC, Sambhajnagar, as

a prosecution witness. Moreover, the accused cannot effectively call the said witness as a defence witness, as he has conducted a departmental enquiry against the accused. Thus, the request made by the petitioner to call the said witness as a Court witness, in exercise of powers under Section 311 of the Cr.P.C., ought to have been allowed by the learned trial Court. The failure of the trial Court to call the said witness has resulted in miscarriage of justice.

3. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Hanuman Ram Vs. State of Rajasthan and Others*, (2008) 15 SCC 652**, to submit that the provisions of Section 311 of the Cr.P.C. are couched in the widest possible terms and there are no limitations as regards the stage at which such powers can be exercised, or the manner in which they should be exercised. It is submitted that the witnesses who are not brought before the Court by the parties can be summoned by the Court, if their evidence appears to be essential for a just decision of the case. It is further submitted that the learned trial Court has rejected the application without properly considering the relevance of the said witness and, therefore, the impugned order is liable to be quashed and set aside.

4. Learned counsel for the petitioner further relies upon judgments of the Hon'ble Supreme Court and this Court to submit that it is the duty of the Court to arrive at the truth by all lawful means, and one such means is the examination of witnesses, even as Court witnesses, when for certain reasons either of the parties is not in a position to examine such material witnesses, though they are relevant for just adjudication of the case.

5. Learned counsel for the petitioner thus submits that the observations made by the learned trial Court while rejecting the application under Section 311 of the Cr.P.C. are misconceived. The learned trial Court has observed that the departmental enquiry against the accused is conducted by the same person and that discrepancies in Exh. 23 and Exh. 28 have already been brought on record through cross-examination of prosecution witnesses. It is further observed that the ends of justice would not be defeated if the Controller, MSRTC, Sambhajinagar, is not called as a Court witness. According to the petitioner, these observations are erroneous, as the said witness is the first recipient of the complaint and could have thrown light on relevant facts, which could assist the accused in establishing his defence. Hence, the impugned order is arbitrary, unjust and illegal, and is liable to be set aside.

6. As against this, the learned APP strongly opposes the present petition on the ground that the petition is filed only with an intention to protract the trial. It is submitted that all the prosecution witnesses have already been examined and the trial is almost complete. Even the statement of the accused under Section 313 of the Cr.P.C. has already been recorded. It is at this belated stage that the present application has been filed. The petitioner has already cross-examined the witnesses on the aspect of the complaint made by the victim to the Controller, MSRTC, Sambhajinagar. The Controller was examined as a prosecution witness, however, the petitioner has failed to explain as to why such application was not filed at an earlier stage.

7. The victim had submitted a complaint dated 20.02.2020 to the S.T. Depot authority, Sambhajinagar, against the accused, which is exhibited at Exh. 28. After exhibiting the said document, the

Investigating Officer and other prosecution witnesses, including Vijay Gayake (PW-4) and Shaikh Aspak Shaikh Musa (PW-5), Traffic Controller, CIDCO, Aurangabad, have been examined. Thus, the document at Exh. 28 is already proved, and the accused had full opportunity to cross-examine the prosecution witnesses in respect of the said document. The complaint was thereafter lodged with MIDC CIDCO Police Station, Sambhajinagar and transferred to Jalna, on the basis of which charge-sheet has been filed. The accused is a conductor employed with MSRTC, and it has come on record that a departmental enquiry has already been conducted and a final report has been submitted. It is therefore submitted that the present application is filed with an ulterior motive to delay the proceedings and was rightly rejected by the learned trial Court.

8. I have gone through the impugned order dated 31.03.2026 passed by the learned trial Court, the application Exh. 91 filed by the petitioner, and the reply filed by the prosecution. The record indicates that the victim had submitted a complaint to the Divisional Controller, MSRTC, which is exhibited at Exh. 28. The prosecution has already examined witnesses, including Vijay Gayake (PW-4) and Shaikh Aspak Shaikh Musa (PW-5), Traffic Controller, CIDCO, Sambhajinagar. The petitioner has cross-examined the said witnesses, including on the aspect of the complaint.

9. It appears that the Controller, MSRTC, Sambhajinagar, was merely the receiving authority of the complaint and his evidence would be limited to the factum of receipt of the complaint. The contents of the complaint are already proved through documentary evidence and through the testimony of the prosecution witnesses. The petitioner has already extracted relevant material in cross-

examination, and the relevant portion marked 'A' is exhibited at Exh.- 23.

10. In such circumstances, when the material evidence is already available on record, and when the trial has reached an advanced stage where the prosecution evidence is concluded and the statement of the accused under Section 313 of the Cr.PC. is already recorded, the application filed by the petitioner under Section 311 of the Cr.PC. at such a belated stage appears to be lacking bona fides and appears to have been filed with an intention to delay the proceedings.

11. The judgment relied upon by the learned counsel for the petitioner in the case of ***Hanuman Ram (Supra)*** does not lay down that every application under Section 311 of the Cr.PC. must be allowed. The provision is an enabling one and is to be exercised only when the Court finds that the evidence of such witness is essential for a just decision of the case.

12. It is well settled that the power under Section 311 of the Cr.PC. is discretionary and is to be exercised judiciously. The Court must be satisfied that non-examination of such witness would result in failure of justice. In the present case, the learned trial Court has recorded a finding that the non-examination of such witness would not defeat the ends of justice.

13. The reasoning adopted by the learned trial Court does not suffer from any perversity or illegality. The learned trial Court has considered all relevant aspects of the matter and has rightly rejected the application filed by the petitioner, which was filed at the fag end of the trial.

14. I do not find any error in the findings recorded by the learned trial Court. The petitioner has failed to make out any case for interference under Article 226 of the Constitution of India.

15. The petition is devoid of merits and is therefore liable to be rejected.

ORDER

A) The Criminal Writ Petition is **REJECTED**.

(MEHROZ K. PATHAN, J.)