IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

CR. WRIT PETITION NO. 919 OF 2026

Vaibhav Subhas Jagtap ...Petitioner

Versus

State Of Maharashtra ...Respondent

Mr. Amit Icham (VC) for the Petitioner.
Mr. Anand S. Shalgaonkar APP for the State

CORAM : SHARMILA U. DESHMUKH, J.

DATE : NOVEMBER 05, 2026

P. C. :

1. By the present Petition, the Petitioner questions the legality of the order dated 14th August 2026 passed by the Additional Sessions Judge, Wai in an application below Exhibit 86 declining to allow the application of the advocate for Accused No. 2 for setting aside the 'No Cross' order.

2. The charge is for offences under Sections 302, 201 read with Section 34 of the Indian Penal Code and under Section 3(25) of the Arms Act. The present Petitioner is Accused No. 2. PW-1 was examined on 31st July 2026 and while the witness was cross-examined by the other accused, in so far as Accused No. 2 is concerned, that is the present

Petitioner, the advocate was absent and the associate of the advocate did not have any instructions to conduct the cross-examination.

3. Learned counsel appearing for the Petitioner submits that the concerned advocate was held up before another Court and the junior was unable to conduct the cross-examination in the absence of any instructions. He submits that under Section 311 of the Code of Criminal Procedure, 1973 (Cr.P.C.) the Court has the power to recall any person already examined and the power ought to have been exercised in the present case.

4. *Per contra*, learned APP supports the impugned order and would point out that the application seeking setting aside of the 'No Cross' order is without any justification for the absence of the advocate. He would further submit that the application is filed in a most casual manner without giving any justification for the absence.

5. The learned Additional Sessions Judge has observed that if the application is allowed, the witness will be required to be recalled, which will cause harassment to the witnesses. It was further noted that though two advocates were engaged, the cross-examination was not conducted and dismissed the application.

6. There is sufficient power in the Additional Sessions Judge under Section 311 of Cr.P.C. to recall the witness and considering the gravity of

the offences in the present case, the power ought to have been exercised.

7. The record does not indicate that there was persistent default on the part of the advocate for Petitioner to conduct the cross-examination and it was only on 31st July 2026, when the witness was already called for further examination-in-chief, that the advocate for Petitioner, being held up in some other matter, could not conduct the cross-examination.

8. The record also indicates that the advocate for Accused No. 1 conducted the cross-examination and therefore it is not as if the witness was not cross-examined and had to be sent back due to absence of the Advocate for the Petitioner.

9. In light of the above, following order is passed.

O R D E R

I. Petition is allowed.

II. The impugned order dated 14th August 2026 passed below Application Exhibit 86 in Sessions Case No. 97 of 2023, by Additional Sessions Judge, Wai is hereby quashed and set aside.

III. The application Exhibit 86 filed in Sessions Case No. 97 of 2023 is allowed.

[SHARMILA U. DESHMUKH, J.]