

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.6366 OF 2025

Umar Farukh Akbar Khan and Anr. .. Petitioners.

Vs.

State of Maharashtra .. Respondents

Mr. K. M. Tripathi, Advocate for the Petitioners.

Mrs. M.M. Deshmukh I/C P.P. with Mr. S.V. Gavand, APP for the respondent-State.

CORAM : GAUTAM A. ANKHAD, J.

DATE : 16TH FEBRUARY 2026

P.C. :

1. The accused, who are presently in judicial custody and lodged at Thane Central Prison, have challenged the order dated 17th September 2025 passed by the learned Additional Sessions Judge, whereby the Petitioners' application to recall two witnesses, namely P.W.7 and P.W.13, for the purpose of cross-examination is rejected.

2. I have perused the record and heard Mr. K. M. Tripathi, the learned advocate appearing for the Petitioners and Mr. S. V. Gavand, the learned APP appearing for the Respondent-State. The record indicates that on 24th April 2025, whilst P.W.7 was present, the Petitioners' Advocate remained absent. Hence the learned Trial Court adjourned the matter and granted a last opportunity to the Petitioners to conduct cross-examination. However, the Petitioners Advocate was repeatedly absent on 6th May 2025, 12th June

2025 and 3rd September 2025. Therefore the learned Magistrate recorded the depositions of P.W.7 and P.W.13 and in the absence of cross-examination by the advocate, granted an opportunity to the accused to conduct the cross-examination. The accused refused to cross-examine P.W.7 and P.W. 13 and an order of “No cross” was passed. Thus, it is clear that the Petitioners Advocate has repeatedly remained absent, which has resulted in delaying the trial despite adequate opportunities granted by the Trial Court. The Writ Petition does not provide any grounds for the absence. Ordinarily, no indulgence is required to be granted to the Petitioners’ advocate for his repeated absence. At the same time, it is well settled that the right of cross-examination is an essential component of a fair trial. The Hon’ble Supreme Court in *Ekene Godwin & Anr. v. State of Tamil Nadu (2024 INSC 229)* has emphasized that the discretion to recall witnesses ought to be exercised in a manner that advances the cause of justice, while ensuring that such indulgence is not misused to protract the proceedings. In the present case, though the conduct of the Petitioners Advocate reflects negligence, the prejudice caused by denial of an opportunity to cross-examine material witnesses may have consequences at a later stage. Having regard to the nature of the proceedings and in order to secure the ends of justice, I am inclined to grant one final opportunity to the Petitioners.

3. Mr. Tripathi, the learned advocate for the Petitioners undertakes that

no adjournment shall be sought on any ground whatsoever before the Trial Court. He further undertakes that in the event of his inability to remain present, he shall make an alternative arrangements to ensure that the cross-examination of P.W.7 and P.W.13 as per the schedule fixed by the Trial Court in case he is unable to attend the same. The undertaking is accepted considering that this matter is already expedited with a time bound schedule. It is clarified that any default on this undertaking shall entail forfeiture of the present indulgence. In view of the above, the impugned order dated 17th September 2025 is set aside. The Trial Court is directed to recall P.W.7 and P.W.13 and fix a date for their cross-examination at the earliest convenient date. Criminal Writ Petition No. 6366 of 2025 is disposed of in the aforesaid terms.

[GAUTAM A. ANKHAD, J.]

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