

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPLICATION NO. 13 OF 2025

Sairaj Vitthal Mhaske and Anr ...Applicants
Versus
State of Maharashtra ...Respondent

Mr. Karma Vivan, with Tejas Dinesh Kothalikar and Isha Rakesh
Singh, for the Applicants.
Smt. R.S. Tendulark, APP, for the Respondent-State.
Mr. Priyal G Sarda, with Shubham Sudam Sane and Anand D, for the
Intervenor.

CORAM: N. J. JAMADAR, J.
DATE : 5th FEBRUARY 2026

ORAL ORDER:

1. The challenge in this Petition is to an order dated 29th July 2024, whereby the charge was framed against the accused without providing an effective opportunity of hearing.
2. The first informant has filed an intervention application. The first informant has annexed copies of the roznama of the proceedings and the orders passed by the learned Additional Sessions Judge.
3. Roznama of the proceeding does indicate that the accused did not cooperate with the learned Judge in the conduct of the trial. The accused has sought adjournments repeatedly to appoint an Advocate to represent them at the trial. If further transpires that accused even

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declined to accept service of the Public Defence Counsel, which the Court had offered to provide to the accused.

4. Nonetheless, the fact remains that on 29th July 2024, when the charge was framed against the accused, they were in judicial custody. They were produced before the learned Additional Sessions Judge through video conferencing. The learned Judge proceeded to frame the charge.

5. The roznama of the proceeding dated 29th July 2024 indicates that only the learned Public Prosecutor was present. None appeared for the accused. Nor does it appear that any hearing on the aspect of framing of charge was held, much less, the accused were not heard on the matter for charge, in conformity with the provisions contained in Section 226 to 228 of the Code of Criminal Procedure, 1973.

6. In the aforesaid view of the matter, de hors the conduct of the accused, which is manifested in the roznama of the subsequent proceeding in the trial and the various orders passed by the learned Additional Sessions Judge, *prima facie*, the Court is of the view that framing of the charge without providing an effective opportunity of hearing to the accused, while they were in judicial custody and sans any hearing as warranted by Section 227 of the Code, has caused prejudice to the accused in their defence.

7. The learned Counsel for the Petitioner on instructions submits that the next scheduled date is 7th February 2026. The accused would appear before the learned Additional Sessions Judge, through their Advocate, and proceed with the hearing on the charge, in the event the impugned order is quashed and set aside.

8. In view of the aforesaid submission and to rule out the possibility of prejudice on account of the framing charge without providing an opportunity of hearing to the accused, the impugned order dated 29th July 2024 of framing charge stands quashed and set aside.

9. The learned Additional Sessions Judge is requested to pass a fresh order on framing charge, after hearing the prosecution and accused on 7th February 2026.

10. It is hereby made clear that, the accused shall not seek any adjournment for hearing on the framing of charge.

11. Once the order on framing of charge is passed, and, in the event, the charge is framed against the accused or either of them, the trial shall proceed in accordance with law, and the concerned accused shall cooperate with the learned Sessions Judge in the expeditious conclusion of the trial in Sessions Case No. 32 of 2024 and shall not seek any adjournment.

12. Petition disposed.

[N. J. JAMADAR, J.]