

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1923 OF 2026

Akash Dnyaneshwar Bhondave and Anr ..Petitioners
Versus
State of Maharashtra & Anr ...Respondents

Mr. Ashraf Kazi, with Ashish N. Saxena, i/b Vipul Dushing, for the
Petitioners.

Smt. R.S. Tendulkar, APP, for Respondent No.1.

Mr. Abhishek Ulhas Arote, with Satyam H Nimbalkar, for Respondent
No.2.

Mr. Rahul Khile, PSI, Ravet Police Station, Pimpri Chinchwad,
present.

CORAM: N. J. JAMADAR, J.

DATE : 30th APRIL 2026

ORAL ORDER:

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 24th March 2026, whereby an Application preferred by the Petitioners-Accused Nos. 1 and 2, for the recall of PW Nos. 15 and 16 for cross-examination, came to be rejected.
3. The trial in Sessions Case No. 497 of 2022 is expedited by the order of the Supreme Court. By an order dated 3rd September 2025, the Sessions Court has been directed to conclude the trial within nine months from the then next scheduled listing of the Sessions Case.

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4. On 6th January 2026, two police personnel namely, Dnyandev Baghade, PW 15 and Akash Jadhav, PW 16 were examined by the prosecution. On that day, as the Advocate, who regularly appeared for the Petitioners-Accused Nos. 1 and 2, was not available and the learned Advocate holding for the former expressed his inability to conduct the cross-examination, the learned Additional Sessions Judge recorded that the Accused declined to cross-examine PW Nos. 15 and 16. Subsequently, the Petitioners preferred an application to recall the abovenamed witness Nos. 15 and 16 for cross-examination. Reference was made to the provisions contained in Section 231 (2) of the Code of Criminal Procedure Code, 1973 (“the Code”). It came to be rejected by the learned Sessions Judge.

5. The learned Sessions Judge was of the view that the Petitioner deliberately avoided to cross-examine PW Nos. 15 and 16 till the Medical Officer’s evidence was recorded. The Petitioner had never reserved the liberty to cross-examine PW Nos. 15 and 16 after the evidence of Medical Officer was recorded. Thus, holding that the application for recall was not bona fide, the learned Sessions Judge rejected the Application.

6. Undoubtedly, as the trial has been made time-bound by the orders of the Supreme Court, the Petitioners-Accused ought to have been made appropriate arrangements if the concerned Advocate was not available

to cross-examine PW Nos. 15 and 16. Thus, an element of indolence may be attributed to the Petitioners. However, the avowed object of the provisions contained in Section 311 of the Code cannot be lost sight of.

7. Incontrovertibly, the Advocate who conducted the trial was not available on the day the evidence of PW 15 and PW 16 was closed. Ordinarily a party cannot be made suffer on account of unavailability of the Advocate to whom it entrusts its defence. A useful reference in this context can be made to the decision of the Supreme Court in the case of **Natasha Singh Vs Central Bureau of Investigation**,¹ wherein the object of Section 311 of the CrPC was expounded, as under:

“16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person’s right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. (Vide: Talab haji Hussain Vs Madhukar Purshottam Mondkar and Anr (AIR 1958 SC 376); Zahira Habibulla H Sheikh & Anr Vs State of Gujarat & Ors (AIR 2004 SC

¹ (2013) 5 SCC 741.

3114); Zahira Habibullah Sheikh (5) Vs State of Gujarat & Ors (AIR 2006 SC 1367); Kalyani Baskar Vs M. S. Sampooram (2007) 2 SCC 258; Vijay Kumar Vs State of UP and Anr (2011) 8 SCC 136; and Sudevanand Vs State, (2012) 3 SCC 387.

8. The Court is informed that all the prosecution witnesses have been examined and the matter is now posted for the examination of the Accused under Section 313 of the Code of Criminal Procedure, 1973 (“the Code”), corresponding to Section 351 of the BNSS, 2023. Since PW Nos. 15 and 16 are police personnel, their presence can be easily secured.

9. In the opinion of this Court, permission to recall PW Nos. 15 and 16 for the cross-examination would advance the cause of substantive justice and promote a fair and just decision.

10. This Court is, therefore, inclined to grant an opportunity to the Petitioners to cross-examine PW Nos. 15 and 16.

11. Hence, the following order:

: O R D E R :

- (i) Petition stands allowed.
- (ii) The impugned order stands quashed and set aside.
- (iii) Dnyandev Baghade-PW No. 15 and Aakash Jadhav-PW No. 16, are recalled for the purpose of cross-examination subject to the following conditions:

(1) The Prosecution shall keep PW Nos. 15 and 16 present before the Trial Court on 2nd May 2026, for the purpose of cross-examination

(2) Petitioners-Accused shall cross-examine PW Nos. 15 and 16 on 2nd May 2026, itself.

(3) The Petitioners shall not seek any adjournment for the purpose of cross-examination of PW Nos. 15 and 16.

(4) If the Petitioners-Accused failed to cross-examine PW Nos. 15 and 16 on 2nd May 2026 for any reason whatsoever, attributable to the Petitioners, this order shall stand recalled and the right of the Petitioners to cross-examine PW Nos. 15 and 16, pursuant to this order, shall stand forfeited.

[N. J. JAMADAR, J.]