



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

906 CRIMINAL WRIT PETITION NO. 732 OF 2023

Yashwant Sahdev Shinde,
Age: 49 years, Occu: Business,
R/o. Sambhaji Nagar Society,
N. M. Joshi Marg, Mumbai-13.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through (Deputy Superintendent of Police)
Bhagya Nagar Police Station,
Nanded, Tq. & Dist. Nanded.
2. Deputy Superintendent of Police,
Central Bureau of Investigation,
13th Floor, Plot No.C-35 A, 'G' Block, Bandra Kurla
Complex, Bandra East, near MTNL Exchange, Mumbai
Maharashtra-4000098
3. Rahul Manohar pande (Died)
4. Sanjay @ Bhaurao Vithalrao Chaudhary
Age: 29 years, Occu:Nil
R/o. Gandhi Nagar,
Nanded Dist. Nanded
5. Ramdas Ananda Mulge,
Age: 25 years, Occu: Nil
R/o. Bajrang Colony,
Nanded, Dist. Nanded.
6. Dr. Umesh Dinkarrao Deshpande,
Age; 39 years, Occu: Doctor
R/o. House No.90/A, Ward No.17,
Ganesh Nagar, Nanded.
Dist. Nanded

7. Maroti Keshav Wagh
Age: 28 years, Occu: Nil
R/o. Bajrang Colony,
Nanded. Dist. Nanded
8. Yogesh Ravindra Deshpande,
Age: 27 years, Occu: Nil,
R/o. Plot No.03, Bank Colony, Waman Nagar,
Nanded. Dist. Nanded.
9. Gururaj Jairam Tupewar,
Age: 28 years, Occu: Agricultural,
R/o. Brahaman Galli, Tq. Mukhed,
Dist. Nanded.
10. Adv. Milind Arvin Ektate,
Age: 47 years Occu: Advocate
R/o. Vidya Nagar, Nanded, and
Vidat Nagar, Nanded Dist. Nanded.
11. Mangesh Ramdas Pande,
Age: 37 years, Occu: Nil,
R/o. Ganesh Mandir,
Nanded Dist. Nanded
12. Rakesh Dattatraya Dhawale,
Age: 45 Years, Occu: Nil,
R/o. Manini Apartment,
Dayari Village Last Bus Stop, Pune

....RESPONDENTS

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Mr. Sanjay Singhavi senior Advocate (through VC) h/for Mr.
Mohanish V. Thorat, Advocate for the Petitioner
Ms. Ashlesha S. Deshmukh, APP for the Respondent-State
Mr. A. T. Jadhavar, Advocate for the Respondent No.2
Mr. Swapnil Joshi a/w Mr. Chetan Chaudhary i/b J. P. Legal Associates
for Respondent Nos. 4, 5, 7, 9 & 12
Mr. B. V. Virdhe, Advocate for Respondent Nos. 6 & 10
Mr. C. S. Kulkarni, Advocate for Respondent No.8

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CORAM : Y. G. KHOBRADE, J.

DATE : 26.02.2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. With consent of both the parties, heard finally at the stage of admission.

2. By the present Petition, under Articles 226 and 227 of the Constitution of India, the Petitioner takes exception to the order dated 17.01.2023 passed by the learned Additional Sessions Judge-2, Nanded, below Exh. 431 in Sessions Case No.14 of 2007, rejecting the Application of the petitioner for impleading himself as a witness in the Sessions trial.

3. The learned counsel for the Petitioner canvass that, the Petitioner is an important witness and he is privy to the conspiracy hatched by the main conspirators Accused (1) Milind Parande, (2) Rakesh Dhawade, and (3) Ravidev (Mithun Chakrawarthy) at Gol Deul, (Round Temple) Khetwadi, Mumbai in the year 2003. It is further alleged that, above main conspirators gave training to the accused persons for manufacturing of bomb and involved in bomb blasts incident occurred in the city of Nanded in 2006 but they were not impleaded as accused because no proper investigation carried out by the Investigating Officer and filed charge-sheet in Sessions Case

No.14 of 2007. Therefore, he being a witness and underwent training with the other accused in the bomb manufacturing process, his evidence is necessary for a just decision. Therefore, he filed Exh.431, an Application and sought permission to implead him as a witness, however, on 17.01.2023, the learned Sessions Court rejected Exh.431.

4. Mr. Sanjay Singhvi, the learned Senior counsel for the Petitioner further canvass that, the Petitioner being citizen of India it is his right to bring true facts before the Court but the petitioner not impleaded as a witness. Therefore, petitioner has filed Exh.431 the Application under Sec. 311 of Cr.PC. and sought permission to implead him as a witness. However, the learned trial court passed the impugned order and rejected the said Application on the ground that the incident of bomb blasts took place on 06.04.2006 in Nanded city. The Prosecution initially investigated the said crime through the Anti-Terrorism Squad (ATS) and subsequently through the CBI. Thereafter, on 12.03.2009, a supplementary charge-sheet was filed but investigation was not conducted and subsequently a closure report was filed.

5. The learned senior counsel appearing for the Petitioner further canvass that, section 311 of Cr.PC., provides ample power to

the Court to examine any person as a witness at any time and any person can come to the Court and stand as a witness to bring material facts on record. Therefore, the learned Sessions Court ought to have granted the application but the trial court wrongly rejected the application, hence, impugned order is illegal, bad in law.

6. Per contra, the learned APP submits that, during the pendency of the petition, on 04.01.2025, the learned Sessions Judge passed the Judgment and order dated 04.01.2025 and acquitted all the accused in Sessions Case No.14 of 2007. Therefore, present petition is infructuous. The learned APP placed the copy of judgment and order dated 04.01.2025, whereby, the trial of Sessions Case No.14 of 2007 has been disposed off, hence, prayed for dismissal of the petition.

7. Needless to say, Section 311 of Cr.P.C. empowers any Court to summon a witness whose name is disclosed in the list of witnesses or to examine any witness whose statement has not been recorded under Section 161 of Cr.P.C., if the court finds their evidence to be necessary for a just decision in the trial.

8. Sec.311 of Cr.P.C. provides that, the Court has Power to summon material witness, or examine person present-Any Court may,

at any stage of an inquiry, trial, or other proceeding under this Code, summon any person as a witness, examine any person in attendance, even if not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

9. On a plain reading of Section 311 of Cr.P.C., it appears that it does give the right and power to any person who can come to the Court at any point of time and make grievance that he is privy to the conspiracy and stood as a witness. Needless to say that, initially the Investigating Officer conducted investigation in bomb blasts incident that occurred in 2006 in Nanded city. Subsequently, the ATS agency conducted the investigation and further investigation was conducted by the CBI. Under these circumstances, if the Petitioner had been privy to the said conspiracy of the bomb manufacturing process, he could have approached the police/investigating agency and disclosed the said fact which may amount to an extra judicial confession as contemplated under Section 26 of the Evidence Act. If the Investigation Agency could have recorded the statement of the petitioner that he is privy to the said conspiracy but his name was not

enlisted in the list of witnesses in that circumstances the learned trial court could have considered prayer of the petitioner. Nonetheless, during the course of investigation, the Petitioner has not made any efforts to give his statement to the Investigating Officer from the day of registration of crime i.e., 06.04.2006 till filing of the Application i.e., 29.08.2022 which filed after more than 16 years. Therefore, to my mind, the present Petitioner has no locus to file an application u/s 311 of Cr.PC. to implead himself as a witness. Nonetheless, the trial of Sessions Case No.14 of 2007 has already concluded and accused are acquitted. Therefore, I do not find that, it is a fit case to interfere with the findings recorded by the learned trial court, hence, the Criminal Writ Petition is dismissed. Accordingly, Rule is discharged.

[Y. G. KHOBRAGADE, J.]